

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii**

April 28, 2006

180-Day Expiration Date: May 09, 2006

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Conservation District Use Application (CDUA) HA-3269
for a Single Family Residence

APPLICANT: Roy Vitousek for
Jonathan Cohen

LANDOWNER: Aloha Properties, LLC

LOCATION: Paoo, North Kohala, Island of Hawaii

TMKs: (3) 5-7-001:005

AREA OF PARCEL ≈10.61 acres

USE: ≈ 5,000 square feet (ft²)

SUBZONE: Resource

BACKGROUND

The Board of Land and Natural Resources (Board) approved Conservation District Use Permit (CDUP) HA-1948 for a Single Family Residence (SFR) on February 13, 1987. The permit became null and void on June 25, 1995 due to the former applicant's failure to complete construction of the project within the Board stipulated time frame.

DESCRIPTION OF AREA AND CURRENT USE

The Cohen Single Family Residence is proposed at a previously cleared site located at Pao'o, North Kohala, island of Hawaii, TMK: (3) 5-7-001:005. The 10.61-acre property appears to be dual zoned with $\approx 15,246$ ft² located in the Agricultural State Land Use District and $\approx 446,926$ ft² within the Resource subzone of the Conservation District. The parcel sits on a coastal bluff approximately 0.6 miles south of Lapakahi State Historical Park (**Exhibit 1&2**).

According to the applicant, the property is vacant. It is bounded by the Pacific Ocean to the west and surrounded by State unencumbered lands. This is an undeveloped open space region makai of Akoni-Pule Highway with dry foothills and the wind-swept ocean beyond. There are no County roads, no water, no sewerage and no electrical services. Access to the subject parcel is by way of a Grant of Non-Exclusive Easement across State land to the SFR site. According to the applicant, the public generally uses the northern jeep road to access fishing and surfing sites (**Exhibit 3 & 4**).

According to the applicant, the proposed project site was formerly a habitation terrace known as Hawaii State Inventory of Historic Places (SIHP) Site 2382. Studies done in 1980 noted that bulldozing had mostly destroyed Site 2382. A combination of erosion and recreational use of the area over the last 20 years has resulted in widespread degradation and loss of site integrity.

According to the applicant, wildfire is an important concern in this part of North Kohala, which has burned on a number of occasions owing to arson, car exhaust, campfires and firecrackers among other causes. Fires started on this property many harm not only the owner's property but nearby property as well, including Lapakahi State Historical Park and other State land.

According to a survey report done in November of 2004, the ground surface in the area slopes 0-20% with steeper inclusions of 7-28% where stream erosion has occurred. The soil is of the Kawaihae series (Aridsols) a dry, stony very fine sandy loam. According to the applicant, throughout most of the parcel soil has eroded leaving a deflated ground surface dominated by rocks. A gulch depicted as intermittent traverses the property several hundred feet north of the project site. The area receives a mean annual rainfall of 10 to 20 inches a year. The mean annual temperature is in excess of 76° F. The area is exposed to strong off-shore trade winds (**Exhibit 5**).

The savanna-like vegetation is dominated by alien species, especially kiawe and buffalo grass. Vegetation at the site consists of scattered kiawe and various drought resistant grasses along with annual herbs and weeds. There are no endemic species of flora. The indigenous ilima and uhaloa are present. The dry, arid environment provides very poor

habitat for native birds, insects and mammals. No wetlands or special aquatic sites are present on the property (**Exhibit 6**).

Archeological surface surveys done in 1980 identified 27 total sites, grouped in five main clusters on the subject parcel. These sites include seventeen habitations, five canoe sheds, one shrine, three burials, and numerous terraced areas. Site 2382 had been previously disturbed by bulldozing and land clearing by a former landowner. This site is the site of the proposed home. With the exception of this site, the current landowner plans to preserve all of the archaeological features on the parcel. According to the EA, a Burial Treatment Plan has been approved by the Department's Historical Preservation Division (HPD) and the Hawaii Island Burial Council. An Archaeological Preservation Plan for the remaining sites and features is currently under review by the HPD (**Exhibit 7**). *[Note: According to recent comments from HPD, they are currently reviewing both the Burial Treatment Plan and the Archaeological Preservation Plan. These plans have not yet been approved.]*

PROPOSED USE

According to the application, the proposed residence would consist of a compound of detached structures of approximately 4,065 ft². Pools and on-grade decks would occupy another 678 square feet. Other improvements include native plant landscaping, rock walls, a proposed public shoreline trail and trail signage (**Exhibit 8, 9 & 10**).

All structures shall not exceed 25 feet in height, shall be set back a minimum of 25-feet from property boundaries and shall be set back a minimum of 50-feet inland from the certified shoreline. Approximately 90% of the parcel shall remain "as is." The siting of the home shall be completely within a previously graded area.

Potable water will be supplied to the residence from an existing brackish well located in the Agricultural District of the property. Water desalination and storage along with electrical power through a combination of photovoltaic solar and a propane-fueled generator are also sited within the Agricultural portion of the property. Wastewater disposal shall be through an approved individual wastewater treatment system and leach field sited in the Conservation District.

Other improvements proposed in relation to this application but not within the Conservation District include chip sealing the easement road across State property and to re-route a portion of a lateral jeep road away from both the proposed building site and a series of burial sites, onto State property to maintain public access to the shoreline. In addition, the applicant is also proposing to improve public vehicular access in the northern part of his property by creating a parking area and establishing a coastal footpath from the improved vehicular access point leading south through the parcel (**Exhibit 11**).

According to the applicant, the proposal may have the effect of encouraging additional public access, by providing a coastal lateral access trail that is slated to become part of the Ala Kahakai. Negotiations have taken place with DLNR and the owner in regards to providing this public benefit of lateral access. The applicant has recommended that if DLNR plans to intensify use of its nearby property, fire education signage and firebreaks should be installed. The applicant states that this recommendation is extended to any plans to encourage public use of trails.

The applicant is planning to landscape the property, bringing in native plants that are adapted to the dry, warm climate of the area and do not require excessive watering or maintenance.

The proposed SFR consists of six detached pavilion structures in a design that reduces the scale and to make the structure less visible from the highway, adjacent land and from the ocean. The design appears to be a best alternative as the proposal appears to be designed as a traditional kauhale home site to be more compatible with the surrounding environs. There will be no reflective surface facing the highway. The mauka sides of the pavilions are proposed to be made up entirely of lava rock, weathered wood and natural colored thatch roof. All of the pavilions are single story and will be surrounded by landscaping for shade (**Exhibit 12**).

According to the applicant, the proposed segmented design is a better alternative than a connected structure because one large structure would have a higher and more massive roof, producing greater visual impact from the shoreline and the highway. The footprint of the separated pavilions is similar in scale to the archaeological features. According to the applicant, this segmented configuration supports the sustainable building guidelines of the Office of Environmental Quality Control (OEQC) because it ensures natural cooling from the trade winds, creates shade in the covered lanais and walls recessed behind overhanging roofs and provides maximum natural interior light.

No alternatives to the project were proposed.

SUMMARY OF COMMENTS

The application was referred to the following agencies for their review and comment: the **State**: Department of Health, Office of Hawaiian Affairs, Office of Environmental Quality Control, Department of Land & Natural Resources Divisions of: Aquatic Resources, Conservation and Resource Enforcement, Engineering, Forestry and Wildlife, Hawaii District Land Office, Historic Preservation; and the **County of Hawaii** Planning Department. The application was also referred to Hawaii County Councilmember Pete Hoffman and the organization KAKOO. In addition, the application, and the Draft and Final Environmental Assessment were sent to the nearest public library, the Bond

Memorial Public Library, to make this information readily available to those who may wish to review it.

Comments were received and summarized from the following:

STATE OF HAWAII

OFFICE OF HAWAIIAN AFFAIRS (OHA)

An Archaeological Monitoring Plan should be drafted. Because the proposed project intends to demolish a state recognized site and due to the proposed project's proximity to known burial grounds, a professional archaeologist should monitor all ground altering activities. The choosing of replanting the area using native flora will have a positive impact on the ecology of North Kohala. Should iwi or Native Hawaiian cultural or traditional deposits be found during ground disturbance, work will cease, and the appropriate agencies shall be contacted.

Applicant's Response

The applicant is willing to contract for an archaeological monitor during ground-altering activities. We acknowledge your support of the landscaping plan and we agree that such efforts can help restore the ecology of North Kohala, which has been impacted by grazing animals, alien plants and fire. If any previously unidentified sites, or remains such as artifacts, shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are encountered, work will stop immediately and State Historic Preservation Division will be consulted to determine the appropriate mitigation. Care will be taken during ground preparation to ensure that, in the unlikely event that human burials are present, they are recognized and dealt with appropriately.

Staff notes: OHA recently revisited the project and the OCCL received additional comments on April 13, 2006. OHA's comments have been summarized and presented below.

A review by OHA Staff of the Hawaii Territory Survey, Registered Map # 2711 clearly indicated that the burial of one Mr. Kauwe is located on kuleana land at the approximate location of State Inventory of Historic Places (SIHP) No. 2383. Prior surveys note this site as a possible ko'a (fishing shrine). The previously ascribed site function definition has apparently been made in error.

OHA requests that the Conservation District Use Permit be denied until interested Native Hawaiian groups have the chance to inform the Hawaii Island Burial Council (HIBC) about the previously identified burial site, pursuant to §13-300, HAR.

Chapter 6E, HRS and 13-300, HAR both provide a framework and process to identify the Kauwe burial site based upon available information which will be presented to the HIBC for their recognition process. Such recognition will greatly assist in implementing the built in protections afforded such burial sites as set forth by the legislature in enacting our current burial protection laws.

As such, our Staff opposes the granting of CDUA HA-3269 until the HIBC has had the opportunity to review the new information and make a recommendation to the state Historic Preservation Division on appropriate treatment, to include protective buffers that may substantively impact the current design of the residence adjacent to this important site. This new information presented is both compelling and deserving of further scrutiny.

OFFICE OF ENVIRONMENTAL QUALITY CONTROL (OEQC)

How do the proposed 6 separate detached structures meet DLNR's rules for a single-family dwelling in the Conservation District?

Applicant's Response

Exhibit 4 of the Hawaii Administrative Rules 13-5 states in the 'Compatibility Provisions,' the following specification: *All structures connected or best alternative.* The proposed segmented design is a better alternative than a connected structure because one large structure would have a higher and more massive roof, producing greater visual impact from the shoreline and the highway. This segmented configuration supports the sustainable building guidelines of the OEQC because it ensures natural cooling from the trade winds, creates shade in the covered lanais and walls recessed behind overhanging roofs and provides maximum natural interior light.

DEPARTMENT OF LAND AND NATURAL RESOURCES (DLNR)

Division of Aquatic Resources (DAR)

Significant long-term impacts adverse to aquatic resource values are not expected from the proposed single-family dwelling and improvements. Any traditional or existing public access to and along the shoreline should be maintained. Any additional or undescribed construction or landscape modifications within the conservation district should be submitted to the Department for review. Precautions shall be taken during construction to prevent debris, landscaping chemicals, eroded soil, petroleum products and other potential contaminants from flowing blowing or leaching into coastal waters.

Applicant's response

We acknowledge the statement that the proposed SFR and related improvements are not expected to have a significant adverse long-term impact on aquatic resource values. We agree with the precautionary mitigation measures listed.

Division of Conservation and Resource Enforcement (DOCARE)

No comments

Engineering Division

No comments

Division of Forestry and Wildlife (DOFAW)

No comments

Na Ala Hele (NAH)

This land was part of an extensive coastal settlement with fishing villages along the coast. Examination of map data and other historical documents NAH has found evidence of a mauka-makai trail and an ancient lateral coastal trail that crosses a portion of the subject property. This is believed to be a segment of the coastal trail that ran from Mahukona to Kawaihae and is sometimes referred to on maps as the "Ala Loa."

Based on the map and historical document data, it has been determined the coastal trail alignment is owned by the State of Hawaii pursuant to §264-1(b) Hawaii Revised Statutes. Furthermore, due to its coastal location, this trail section may be considered a potential alignment by the National Park Service for the Ala Kahakai National Historic Trail designated by Congress on November 13, 2000. It is recommended that a modern metes and bounds survey of the coastal trail be completed and all adjoining landowners and affected agencies be notified of any future management plans of this ancient trail.

The mauka-makai trail has evolved into an easement for access and utility purposes from the Kawaihae-Mahukona Road to the subject property. The Board granted this easement that passes over government land to the applicant in 2003.

Applicant's Response

Site inspections by our archaeologist, planner, environmental scientist, surveyor, owners representative and officials from the federal trails group developing the Ala Kahakai trail discovered no physical evidence of any lateral trails on the project site. The location of

the trail appears to have it going directly through a number of ancient, well-preserved archaeological features. This calls into some question the validity of the placement of the trail on the exhibit. The applicant met with representatives of the Ala Kahakai development team and traversed the site. An alignment for a coastal lateral trail that could be constructed on the ground and used without harming archaeological sites was flagged and later surveyed. This lateral trail alignment is indicated on the exhibits included in the Draft EA and the CDUA. The application identifies and supports the use of this lateral trail for coastal trail access.

Na Ala Hele recommends that the applicant conduct a metes and bounds description for the coastal trail as depicted on the map. As there is no evidence on the ground of any trail and the alignment depicted on the map is almost certainly erroneous, this would not be possible. The applicant can provide a metes and bounds description of the trail that was identified and flagged in cooperation with the Ala Kahakai development team. This trail will provide adequate coastal access along the shoreline area of the property.

The applicant has proposed the realignment of the makai area of this easement as part of the proposed action. The applicant is not opposed to the public's continued use of this realigned easement that terminates at the lateral jeep trail. It is noted that citizens at the Public Hearing expressed concern that open vehicular access could threaten cultural and archaeological resources in the area.

Hawaii District Land Office (HDLO)

No comments

Historic Preservation

Our office previously reviewed and accepted the archaeological inventory survey report that identified four burials, which were assigned State site numbers. Division Staff are finalizing their review of the Burial treatment plan with the intent to approve a 30-foot buffer zone. Once approved, no ground disturbing activity can be conducted within these buffer zones.

Staff is also reviewing a preservation plan for other archaeological sites located on the property. As understood, the landowner is proposing preservation in place of these sites, and has offered to protect them by establishing a 15-foot buffer zone around each site. We believe this proposal is reasonable and it's our intent to approve this proposal. However, we are unable to accept the current preservation plan as final as we have recently received information indicating that a site designated as a shrine during the inventory survey may be a burial site.

Staff is currently reviewing historical maps to determine whether this site contains a human burial. Should this be the case, the Hawaii Island Burial Council who maintains jurisdiction for all burial sites identified during archaeological survey work will be contacted to make a determination of preservation in-place or relocation. Once the Council makes a determination, a burial treatment plan will need to be submitted to the Historic Preservation Division for review and approval. That plan will identify whether the burial is to be preserved in-place or relocated to another site. It will also establish the buffer for this particular site. We would favor the establishment of a 30-foot buffer.

Applicant's response

There are a few misstatements in the letter that should be corrected. With respect to the burial treatment plan, the first draft submitted in May 2003, prepared in consultation with a recognized descendant contained a provision of a 20-foot buffer around known burial sites. Continued consultation with additional descendants resulted in a change of the buffer size to thirty feet. The HIBC officially voted to preserve these burial sites in place in July 2003. This modified burial treatment plan was resubmitted to SHPD. A review of the files has discovered that SHPD never sent the final approval for the burial treatment plan. They are 2.5 years overdue to comply with their 90-day statutory time period for providing final acceptance following HIBC approval.

Ms. Chinen's statements that "Staff is also reviewing a preservation plan for other archaeological sites located on the property" and "we are unable to accept the current preservation plan as final" are not consistent with my conversations with her staff, which indicate that the preservation plan is acceptable. The plan proposes to preserve the entire archaeological landscape and to have the building envelope encroach no closer than 15 feet to the archaeological sites nearest the proposed residence.

Regarding the suggestion that Site 2383 may contain a burial, when the Hawaii Island Archaeologist of SHPD was consulted with respect to this site, we agreed that because the landowner was planning to preserve this site there was no need, or desire to "go grave hunting" and that the shrine interpretation could stand. As an archaeological feature it is considered just as significant whether it is a grave or a shrine, or a house site for that matter; and along with the other sites on the property (both burial and non-burial) is being treated with the utmost respect and sensitivity. Site 2383 and its location relative to the proposed residence were discussed during the consultations with the cultural descendants of this land.

Given the numerous archaeological features on the property, including several known graves in the vicinity of the "Kauwe Grave" map notation, it is hard to believe that one could positively correlate SIHP Site 2383 with this notation. As for the claim itself that this site is Kauwe's grave, the sole source of this information seems to be a notation on a 1924 Hawaii Territory Survey Map that labels "Kauwe's Grave" towards the southern

end of Kauwe's grant lot. This grant is listed as 16 acres in size. Mr. Cohen's property is currently 10.6 acres in size. This means that the boundaries of the two properties are not coterminous. Mr. Cohen's property does not appear to extend as far south as the Kauwe grant property. The telling landscape feature is the circular cove that is incorporated into the Kauwe grant property, but appears to be south of the current TMK parcel. It is possible that the notation "Kauwe's Grave" may refer to the known burial area that has been identified collectively as SIHP Sites.

As the SHPD Administrator, Ms. Chinen makes final decisions for her division; the a priori position taken by Ms Chinen relative to the potential establishment of a 30-foot buffer at a minimum is not consistent with my discussions with her staff and certainly not formulated based on any descendants' consultation. Information relative to these issues shall be provided to the Council at the HIBC meeting on April 20, 2006.

Staff notes: HPD comments were received on April 12, 2006. There appears to be differing opinions regarding the location of a grave. Staff notes the shoreline is not a set landmark, therefore the frame of reference of the cove is not reliable.

Office of Conservation and Coastal Lands (OCCL)

Please clarify the role of the caretaker and where this person will be residing, if at all, on the proposed site.

Applicant's response

The applicant is going to be generating his own power and providing his own potable water by having a desalination plant next to his well in the Agricultural (Ag) district. The intention is to have a building in the Ag district housing the propane generator, wellhead, desalination plant, water tank and to store equipment. The caretaker will be a full-time employee who will be responsible for all of the utilities services, gardening and general security. His office will be in the Ag building.

It is not proposed that the caretaker be a resident at the project. The only time it is anticipated that the caretaker would spend the night would be on occasion when the family is away and there is a particular need for someone to be present on the site. In that case he would spend the night in the proposed SFR. There will not be more than one residence in the Conservation District.

UNIVERSITY OF HAWAII

Environmental Center

As with other proposed construction in shoreline areas, exposure to wave and storm hazards is an issue in this proposal. We urge planners and environmental managers to take particular note of the historically based setback provisions adopted by the County of Maui. Adoption of comparable provisions would have a salutary effect with regard to avoiding losses and protecting public health and welfare.

A concern with this project is the proximity of the dwelling to archaeological sites. The draft EA specifies that an archaeologist should be present to orientate the construction crew before the work is conducted. It is unclear if an archaeologist will be present during the construction. We suggest that a professional archaeologist be present to monitor construction when earth-moving activity is undertaken.

Regarding the Individual Wastewater Treatment System, our reviewers feel that a more comprehensive discussion of wastewater management practices would be appropriate in the final EA. Specific topics for discussion should include the depth of soil in the proposed location of the septic tank and leach field, drainage characteristics of the soil and topography in the area and the potential for runoff from that area to contaminate the coastal and ocean ecosystems.

Applicant's response

Shoreline erosion and wave hazard. We agree with the idea of appropriate shoreline set backs are important for avoiding losses and protecting public health and welfare. The shoreline in this particular area is rocky and not subject to rapid erosion on human time scales. There are several archaeological features along the shoreline near the proposed residence-some at lower elevation (closer to the shore)-that are relatively intact, indication that a major catastrophic storm event has not occurred in the past several hundred years.

Archaeological monitoring. The applicant is willing to contract for an archaeological monitor during ground-altering activities.

Wastewater treatment. The expected treatment for the wastewater is an aeration-type treatment plant that treats water to the secondary level. It is then chlorinated and discharged for beneficial re-use in irrigation or to a drain field of crushed rock. Similar treatment has been successfully operating in Puako and Kapoho.

COUNTY OF HAWAII

No comments beyond our pre-consultation comments provided in our December 8, 2004 letter and our Special Management Area Use Permit Assessment Application letter of determination dated June 23, 2005.

COMMUNITY MEMBER

There are serious problems in regard to size, nature, scope and added developments. An oral agreement was made with Mr. Cohen and his consultants regarding protection of the sites, the boundaries of the sites and no lateral access to the sites due to the sacred and sensitivity of the sites and other mitigating circumstances connected to the area of Pao'o.

We are against public access due to the sensitivity of our ancestral sites. Our families condemn the notion of lateral access for the public, as it will cause a desecration to the sacredness of the sites in the Pao'o area that we are committed to protect. There are certain groups demanding lateral access. We are in the process of working with Mr. Cohen and his consultants to provide a mauka-makai access path for the public but it will not allow access to go anywhere the public chooses. This is all in accordance to the Kapu of ka poe, our ancestors beliefs and traditions. We are continuing to work with the applicant.

Applicant's response

We acknowledge your concern about the sensitivity of the sites and the impacts not only to their physical but also their cultural values that could result from increased public access. Although mitigation measures are proposed, it is acknowledged that this may not be sufficient to fully prevent harm. Throughout Hawaii this is a growing problem of the tradeoff between providing more public access and protecting sensitive sites. Please note that Mr. Cohen is not proposing to facilitate public pedestrian lateral access as part of his home construction, but that agencies concerned with expanding and improving public access are requesting that he do so as a condition of his permit to build a SFR. Your commitment to refining a plan in consultation with Mr. Cohen and DLNR to provide appropriate public access yet to protect sensitive sites is acknowledged.

MALAMA KOHALA KAHAKAI (MKK)

We strongly urge the denial of this application for the following reasons:

It will have a direct detrimental impact and contribute to broad negative cumulative effects upon an area of historical and cultural significance. The property is part of a contiguous region of the best intact pre-contact Hawaiian archaeological sites. Allowing homesites to dissect and disturb both physically and visually contiguous areas of rich

resources has permanent negative consequences to sustaining Hawaiian culture and history. If granted, it will be the first house on this stretch of the coast and will set a precedent for allowing development on conservation lands.

The land has been in public use by the Kohala community for generations for a variety of cultural activities and recreational activities, including surfing, hiking, fishing, camping and worshipping at the Ku'ula.

For over 30 years the people of North Kohala have worked to keep this section of the coast free of any development. The community, County Council and the State Legislature have worked to ensure this area remains in open space for perpetuity. This includes a petition of 5,700 signatures of Kohala residents calling on the State and County to stop all development until studies of the coastline could be completed. In addition, a letter dated January 31, 2006, signed by 30 North Kohala businesses and organizations calling on the Mayor to prioritize this area for open space protection.

There is support for the resources to be secured to purchase the property for permanent protection with a land trust or for expansion of Lapakahi State Park. MKK is having conversations with a private donor to contribute to purchase to protect these lands and a local land trust. MKK is willing to work with Mr. Cohen to identify and find a more suitable building site mauka and to raise the funding needed to reimburse Mr. Cohen for his expenses on this application to date.

Public access control and monitoring and maintaining the cultural and archeological sites is a very sensitive issue and deserves a thorough, meaningful, longer community conversation with the community's many lineal descendents and cultural practitioners. It is misleading to imply that these sites will be over run by the public and that the best protection for these sites is to allow private control of the access to the area. We are concerned about the limiting access to the proposed shoreline trail and discouraging or denying cultural practitioners access to this area.

There is a predominant heart felt desire of most North Kohala residents to keep all areas makai of Akoni Pule Highway free of houses and development. The house and supporting structures will negatively impact one of the last contiguous view planes free of development from the highway. Protection of this view plane has been identified in the County's General Plan and in County and State resolutions.

Approval will have deleterious effects on the public health, especially for the Native Hawaiians. Approval of this application accelerates cultural deterioration. When long time residents observe houses and fences being built, the people are cut off from the land visually and physically. The disconnect changes who we are and is demoralizing and damaging and it does effect the public health. It bothers the kupuna to know that their children and grandchildren can only view these areas through fences and in between

houses. The public health is better served by preserving the area as open space in perpetuity. The deterioration of open space and environmental quality undermine cultural integrity.

We strongly oppose the realignment of trails. The application states that the benefit of the proposal to the community is monitoring the area. However building on and near important archeological sites and on favorite campsites and recreational areas is more likely to off set this benefit and far more likely irritate local residents.

Staff notes: This area of the North Kohala coast remains undeveloped makai of Akoni Pule Highway. With the exception of a private parcel located .6 m miles to the North, the remaining lands appear to be owned by the State.

Applicant's Response

The Board has previously granted a CDUP to build a single-family home on this property (CDUP HA-1948). The applicant went through and essentially redid most aspects of the environmental and cultural assessments, met and walked the property with lineal descendants of persons associated with the ahupua'a, met with concerned individuals including recreational and cultural users, met with representatives off relevant State and county of Hawaii agencies, finalized an archaeological mitigation plan, obtained Burial Council approval of the burial treatment plan, and developed access plans in a real effort to identify and mitigate any and all potential adverse impacts associated with building a single family home. Applicants resubmitted an EA, a CDUA and participated in a public hearing in south Kohala on January 24, 2006. All testimony at the public hearing was supportive of the proposal. No one purporting to represent Malama Kohala Kahakai (MKK) or any of the other groups listed by MKK commented on the EA, made timely comments on the CDUA or attended the public hearing.

Mr. Cachola who signed the letter on behalf of MKK has been aware of Applicants intention to build a SFR on this property and had participated in pre-application meetings since at least 2002. Mr. Cohen, his Counsel, Tom Lenchanko, Suzanne Case and Mr. Cachola as members of the Board of Directors of an organization called *Ike Aina*, met Mr. Cohen on site. Mr. Cachola proposed that Ike Aina be given the responsibility to mangle the archaeological sites on the subject property. Mr. Cachola personally and individually represented to Mr. Cohen that he supported Mr. Cohen's objective of building a SFR on the property and that he would assist Mr. Cohen in community relations and in managing the archaeological sites.

In a draft agreement, Ike Aina was proposing that the Cohens give Ike Aina the authority to manage all aspects of public access, recreation, education, and the loke with respect to the archaeological sites and the subject property. The contract expressly acknowledges and understands that Mr. Cohen will be building a SFR on the property.

Mr. Cohen did not enter an agreement with Ike Aina as Mr. Cachola had held a community meeting and had made representations that he would be managing the property and that there would be school groups utilizing the property as a cultural resource center. These representations were not consistent with Mr. Cohen's understanding and raised concerns as to the advisability of proceeding with an agreement with Ike Aina.

Through the archaeological consultant, Dr. Rechtman identified specific families and individuals who were lineal descendants of the persons who built, lived in, and used the structures at Pao'o and whose ancestors are buried there. The lineal descendants were concerned about Mr. Cohen conferring responsibility for the sites to an organization, which did not include lineal descendants from Pao'o. Mr. Arthur Mahi, as a lineal descendant, was very clear as to the decisions to how the sites are treated, restored, and opened to the public. These decisions should be made in conjunction with the lineal descendants of the people who built and lived in those structures. Mr. Mahi told Mr. Cohen that he should view himself not as the owner of the property but as part of the family who live there and take care of it. Mr. Mahi explained that he and members of his family should be involved in these decisions and that if the Cohen family was going to build their home and live on the property, they should act like members of the family and make decisions with respect to how the property is used, protected, and viewed in conjunction with the family.

The Cohen family supports public access to and along the shoreline. However, the Cohens respect Mr. Mahi's concerns about unrestricted public access to the archaeological sites. While the Cohen family has hoped there would eventually be appropriate public access to the archaeological sites for purposes of study, learning, cultural appreciation, etc., Mr. Mahi has advised the Cohens that it is inappropriate to just open up the site to unrestrained public access and the sites must first be cared for in an appropriate manner and by appropriate people.

Mr. Cohen is disappointed that Mr. Cachola has opted to attack his family's plan for a home. The Cohen family has not made any written agreements with any party group relative to his SFR on the property. Mr. Cohen has and will continue to listen to the concerns expressed by members of the community who have used the property for fishing, surfing, along-shore access, and the like. Mr. Cohen has gone far beyond what other similar applicants have done to insure that the concerns and issues of native Hawaiians and other recreational users are protected in the context of his SFR.

The submission by MKK purports to state a preference for public acquisition of the Cohen property or acquisition by a land trust or similar entity. The property was specifically offered to the State of Hawaii in September 1999 for sale or land exchange

before the Cohen family acquired the parcel. At no time did the state take any action to acquire the property.

It seems questionable that any legitimate community or land trust organization would participate in acquisition of the property after a blatant attempt to undermine the existing owner's legitimate plans and to devalue the property to the extent it has. In the context of another organization, which described itself as "a native Hawaiian land trust," supported the proposed SFR provided the owner entered a contract with the nonprofit entity of which he was a member. One wonders whether Mr. Cachola disclosed this fact to the various entities he purports to represent. He did not disclose these facts in his letter to the Department. We also wonder whether the organizations listed knew their names would be used in conjunction with opposing the application. Three organizations were contacted and advised us that they were not aware their names were being used in any way or for any purposes associated with opposing the Cohens' CDUP application.

The proposed SFR will not damage or destroy any pre-contact Hawaiian archaeological site. Whatever was at Pao'o before the Cohens build their home will be there after. There are several house sites along the coast between Kawaihae and Upolu Point. The Hawaiian government granted the property to a private individual after the Mahele. The structures on the property show that the area has been used for house sites for hundreds of years. The lineal descendants of the people who built and lived in the house sites on the property do not object to the Cohens building their home there.

No sites are being damaged by the construction of the house. All sites in proximity to the proposal were identified and described in archaeological studies, which were accepted by DLNR/SHPD. Because no sites will be destroyed or modified if there is any change in the assessment or categorization of a particular site at some point in the future, it will not affect the proposal. Buffers are in place and will be respected.

There are several areas between Kawaihae and Upolu Point where there are single-family homes makai of Akoni Pule Highway. These include Hawaiian Homelands, Kohala Waterfront, Mahukona, Pua Kea Bay, etc. The letter ignores the presence of other SFR's makai of Akoni Pule Highway and argues that this home would set a precedent. If there is any suggestion in the application that there is a precedent, it is the fact that the Board previously granted a CDUP for a SFR in the same location as proposed by the Cohens.

Any argument about the effect of granting another CDUP relative to Pao'o might have on other parcels elsewhere is speculative. The Board will review each application on its own merits.

The application clearly acknowledges that members of the public have fished, surfed, and hiked along the coastal areas of and makai of the property. Mr. Cohen has not observed people "worshiping at ku'ula" nor seen any evidence of this, but it may well occur.

The proposed home will affect a small portion of the property. No cultural sites will be disturbed. The coastal trail runs makai of the proposed home and the jeep trail runs mauka and will provide access for recreation. The Cohen family support public pedestrian access along the shoreline and will grant a public access easement over the coastal trail as delineated.

In communication with representatives of the entities listed, we have been advised that the entities were not aware of the Cohen CDUP application, did not intend to oppose it and have not authorized anyone to oppose the CDUP application on their behalf. Mr. Cohen does not doubt that many people generally support open space and preservation of cultural resources. Mr. Cohen does doubt that the 30 entities and organizations passed resolutions or made official statements requesting that the BLNR to deny his application. It appears that Mr. Cachola may again be suggesting that he has authority to act for others when in fact he does not.

The suggestion that the property might be purchased by a governmental or private entity is not based on fact and is merely an effort to delay the permitting process to deny Mr. Cohen and his family the use of their land and to devalue the land while someone runs around and tries to put substantive and reality into these representations. There is nothing concrete in the statements.

The DLNR (OCCL, Land Management, State Parks) and the County of Hawaii reviewed and commented on the EA and CDUA without mentioning any interest in acquiring the property. I am not aware of any action taken by the State to pursue acquisition of the property. No land trust, no private donor has ever approached Mr. Cohen about purchasing the Pao'o property.

Mr. Cohen should not learn of this alleged goal of "working cooperatively with landowners to meet their financial needs" in a last minute plea to deny the application to build his home. The offer to work with Mr. Cohen is not timely and not genuine. MKK is trying to ambush Mr. Cohen and ask the BLNR to deny his application and to prevent him from being legally entitled to build the proposed house. They are trying to devalue the property so that maybe someone could buy it for less than it is worth.

The first he heard of the alleged desire to buy the land, to pay his expenses, or to cooperate with him is in the plea to deny the application-which was not even sent to him. Mr. Cohen's interest in building a home has been open, public knowledge for years. There have been many meetings and consultations, the EA and CDUA have been public, and there was a duly noticed public hearing. There was ample opportunity to comment, to cooperate, and to make an honest offer.

The house will be minimally visible from the road. It will be low-rise, spread out, and landscaped and painted to blend into its surroundings. The agricultural building will be on Ag-zoned land. The adverse impacts will be minimal.

Mr. Cachola never mentioned a concern for the health of native Hawaiians allegedly inflicted by the Cohen home or that approval of the home would "accelerate cultural deterioration when he proposed to manage the property on the Cohen's behalf. All cultural sites will be preserved. The home will be built in an already graded area. The space will remain in conservation and will remain mostly open space.

Mr. Cohen has gone through each step of the process with real consideration for the people of the area. He has tried to do it right. He will use his resources not only to build a home, but also to protect and preserve the area as if he was adopted by the families who lived here before.

Staff notes: Mr. Vitousek states that there are other house sites in the area: *"There are several areas between Kawaihae and Upolu Point where there are single-family homes makai of Akoni Pule Highway. These include Hawaiian Homelands, Kohala Waterfront, Mahukona, Pua Kea Bay, etc. The letter ignores the presence of other SFR's makai of Akoni Pule Highway and argues that this home would set a precedent. If there is any suggestion in the application that there is a precedent, it is the fact that the Board previously granted a CDUP for a SFR in the same location as proposed by the Cohens."*

While this statement is not untrue, Staff notes that there are no residences near the proposed house site makai of Akoni Pule Highway, and this area of the North Kohala coastline remains wild and undeveloped (**see Exhibit 13**). The proposed project will alter the open and wild nature of the coastline. In addition, the fact that a CDUP once existed for this site but was nullified by the BLNR should not be used as a justification to support the present application. This former application (CDUP HA-1948, 1985) was nullified at the request of a community group who clearly had concerns over the use of the site for a single-family residence.

Dr. Kehaunani Abad, Archaeologist
(At the request of the Directors of MKK)

There are significant problems with the Cultural Impact Assessment (CIA) that was submitted with the project. Serious inadequacies involve the section "Identification and Mitigation of Potential Cultural Impacts." The primary concerns are as follows:

1. Inappropriate site boundary identification. The project involves the artificial partitioning of sites into arbitrary, discrete units. The project should not be seen as sitting adjacent to discrete sites that it only minimally disturbs. The

project should be seen as a large footprint imposed upon a complex or related and integrated sites representing a traditional Hawaiian shoreline community. Significantly, that community extends beyond the project area representing in total an invaluable cultural resource, given its scale, relative high degree of integrity, contiguous view planes, and current lack of intrusive modern construction features. A substantial body of research in archaeology supports the point that the use of small bounded and arbitrarily identified "sites" frequently lacks interpretive utility and archaeological validity.

2. Lack of adequate consultation. The study named only four individuals who were consulted in the process of identifying Tradition Cultural Properties (TCP) and in assessing the potential impacts of the project on the TCPs. The CIA makes no mention of any public solicitation of comments about the sites within the project area.
3. Inappropriate significance determinations of sites. Because there was inadequate consultation with knowledgeable individuals from the Hawaiian community, such further evaluations were not thoroughly accomplished. Instead, the four people consulted determined, seemingly on behalf of all Native Hawaiians, that most of the sites in the project area hold no cultural significance.
4. Lack of recognition of the importance of TCPs to a cultural community. A publication cited in the CIA is the US Department of Interior's publication, *National Register Bulletin 38 Guidelines for Evaluating and Documenting Traditional Cultural Properties*. *Bulletin 38* conveys the following:

Traditional cultural values are often central to the way a community or group defines itself, and maintaining such values is often vital to maintaining the group's sense of identity and self-respect. Properties to which traditional cultural value is ascribed often take on this kind of vital significance, so that any damage to or infringement upon them is perceived to be deeply offensive to, and even destructive of, the group that values them. *Bulletin 38* clarifies that even the infringement upon a site (rather than its complete destruction) can have significant cultural impacts to those who value the sites involved.

5. Inappropriate criteria used to define TCPs. The CIA suggests that continuity in the traditional use of a site for a 50-year period is required to distinguish a site as a TCP. However, *Bulletin 38* states the opposite, "*the fact that a property may have gone unused for a lengthy period of time, with use beginning again only recently, does not make the property ineligible...*"

The CIA prepared has failed to adequately assess the cultural impacts of the planned project on the traditional Hawaiian cultural sites on the property.

Applicant's Response

In her review of the CIA, Dr. Abad lists five areas of concern that constitutes "serious inadequacies." Each one is addressed below:

1. Inappropriate site boundary identification. The boundaries of sites were previously determined in an archaeological study conducted by Archaeological Research Center Hawaii, Inc. (Hammatt and Folk 1980). They adopted a splitter approach when assigning site numbers to a more or less continuous set of archaeological features. As offensive as the concept of boundaries may be, it is the regulatory benchmark for defining sites and assessing their significance. The project area is not seen "as sitting adjacent to discrete sites that it only minimally disturbs." Rather the building envelope was carefully chosen so as to not directly impact any of the intact archaeological features, and the residence is designed so as to not overpower the existing cultural landscape.
2. Lack of adequate consultation. There was a public meeting held in Kohala by Fred Cachola as a representative of Ike Aina when he was in support of the current CDUA and thought his organization would enter into a partnership with the Cohen family. Public notices were placed in several publications with both island-wide and statewide circulation with respect to the treatment of known burials within the project area. The families that came forward were able to establish genealogical ties to Pao'o to the satisfaction of DLNR. We felt these families were the most culturally appropriate individuals with which to consult.
3. Inappropriate significance determinations of sites. Rechtman Consulting, LLC made the significance determinations using the regulatory criteria and standards promoted by SHPD. The families that were consulted did not make any determinations "on behalf of all native Hawaiians," their input was given on behalf of their families, who had genealogical ties to the project area. It was clear that to these families the entire project area is culturally significant. We believe that these local families are the appropriated consulted party.
4. Lack of recognition of the importance of TCPs to a cultural community. Two potential TCPs were identified in the CIA based on the use of the area for resource exploitation and recreation. Specifically, access to and use of the shoreline and immediate offshore area for fishing and surfing. The importance of these activities to the community is recognized. It is possible

that by improving coastal access the project will have a positive impact with respect to these activities.

5. Inappropriate criteria use to define TCPs. Nowhere does the CIA state "continuity in the traditional use of a site for a 50-year period is required to distinguish a site as a TCP." The CIA provides the definition of TCP contained in the regulatory statutes. There was no evidence observed at any of the archaeological sites that indicated use associated with ongoing traditional cultural practices.

In addition to these comments, the consultants provided additional written comments relevant to this correspondence and the CDUA, which are attached as **Exhibits 14, 15, 16, 17, 18, 19, 20 & 21**. Comments in Mr. Vitousek's subsequent letters are largely a re-iteration of issues and concerns previously covered. The OCCL responded to some of his concerns in **Exhibit 27**.

Staff has received late comments from other members of the public attached as **Exhibits 22, 23, 24 & 25**. The Department is also in receipt of what has been identified as "*almost 7,000 signatures on a petition calling on the State and County to stop all development until studies of the coastline can be complete*" (**Exhibit A**) and other examples of the long-standing community support for preserving the Kohala coast in open space (**Exhibit B**).

ANALYSIS

After reviewing the application by correspondence dated November 15, 2005, the Department has found that:

1. The proposed use is an identified land use in the Resource subzone of the Conservation District, pursuant to §13-5-24, HAR, R-8, SINGLE FAMILY RESIDENCE, (D-1), "A single family residence that conforms to design standards as outlined in this chapter." **Please be advised, however, that this finding does not constitute approval of the proposal;**
2. Pursuant to §13-5-40 of the HAR, a Public Hearing will be required in the public interest;
3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and Chapter 11-200, HAR, a finding of no significant impact to the environment (FONSI) is anticipated for the proposed project;

4. By documentation dated June 23, 2005, the County of Hawaii has determined that the proposed construction of the proposed single-family dwelling and related improvements are exempt from the definition of development subject to conditions as defined in Special Management Area Assessment Application No. 05-000042 (SMAA 05-42).

A Public Hearing took place on January 24, 2006 at 5 p.m. at the Spencer Beach Park located at Kawaihae, South Kohala, Hawaii. Nine individuals in addition to the Hearing Officer and Staff were in attendance. Four individuals provided testimony. Testimony was supportive of the application, however, there is a concern regarding public lateral access and the potential impact the public may have on the cultural historical features that exist on the parcel.

The Finding of No Significant Impact (FONSI) was published in the March 8, 2006 publication of the Environmental Notice.

The application has been evaluated under the criteria set forth in HAR §13-5-30(c) as follows:

1. *The proposed land use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare.

The project is considered an identified land use in the subject area of the Conservation District; as such, it is subject to the regulatory process established in Chapter 183C, HRS and detailed further in Chapter 13-5, HAR. This process provides for the application of appropriate management tools to protect the relevant resources, including objective analysis and thoughtful decision-making by the Department and Board of Land and Natural Resources.

The proposed use will create the first Single Family Residence in an undeveloped coastal area, surrounded by undeveloped State lands. It is understood that the area has been utilized by the general public as a recreational resource for surfing, camping and fishing for generations. It is not known how many or how frequently the area is visited. The subject parcel contains State owned trails and significant archeological and cultural resources.

The proposed development will alter the character of the area that can best be described as that of a rugged unabridged coastline.

2. *The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur.*

The objective of the Resource subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas.

Staff believes the proposed use will affect the current activities that take place at and around the site, such as surfing, hiking, sightseeing, fishing, and camping. The development of the site is likely to reduce the open and rugged nature of the area impacting people's use of the coast, and also limit people's access to the water on a coastline where access to the water is already severely limited. Islanders have utilized the shoreline fronting the proposal for generations for ingress and egress to the ocean resources. Native Hawaiians used this spot as a point of access and egress for their canoes, as evidenced by the canoe haies located next to the shore.

The applicant proposes to realign the current access way that runs into this area around the south perimeter of Mr. Cohen's land so that the public will be directed away from the site onto abutting State land. Staff does not know what shoreline conditions are like in this area of State land.

3. *The proposed land use complies with provisions and guidelines contained in Chapter 205, HRS, entitled "Coastal Zone Management," where applicable.*

The proposal may decrease coastal recreation to the public. The proposal may modify access to resources uniquely sited for recreational activities that cannot be provided elsewhere. This area is one of the few places in which the public may gain access to the ocean.

4. *The proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area, community, or region.*

The proposed road improvements may allow more people to access this remote coastal area and increase the potential of inadvertent and intentional damage to the natural and cultural resources. Staff is of the opinion that the proposed use may result in user conflicts as people have been utilizing this area for years without the presence of human settlements. Conversely, the area, once settled, may cause traditional users to seek outdoor experiences elsewhere.

5. *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding area, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

The proposed project incorporates sustainable design standards and is proposed to be largely self-supporting. However, Staff is of the opinion that the proposed residence cannot be entirely mitigated and this brings into questions whether it is compatible with the locality and surrounding area, which is undeveloped and rugged. This would be the first SFR in this particular area of the leeward lands of North Kohala.

6. *The existing physical and environmental aspect of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, which ever is applicable.*

The remote undeveloped, and archaeologically rich landscape will be permanently adversely affected by the development. Staff is of the opinion that the SFR will impose upon the natural beauty and open space characteristics, despite the applicant's admirable efforts to design an environmentally and culturally sensitive project.

7. *Subdivision of the land will not be utilized to increase the intensity of land uses in the Conservation District.*

No subdivision of land is proposed for this project.

8. *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

Staff notes, public comments received late in the review process have stated that the proposed use may be detrimental to the public health, safety and welfare of the native Hawaiians and long time residents. They note that a sense of loss and hopelessness may prevail and the proposed development may be detrimental to Hawaiian culture (*Malama Kohala Kahakai comments*).

As stated by the applicant, wildfire is an important concern in this part of North Kohala, which has burned on a number of occasions. Staff has strong reservations regarding placing a SFR and the household in a fire prone area.

DISCUSSION

Staff is of the opinion that this remote and undeveloped area of leeward North Kohala is not presently an appropriate location for a modern residence. The area is completely devoid of any infrastructure or development as evidenced by aerial photographs (**See Exhibit 13**). There are significant archaeological sites up and down the coastline and the

area appears to be of significant cultural importance. The many archaeological sites appear to be an extension of the sites found at the nearby Lapakahi State Historical Park.

Archeological surface surveys done in 1980 identified 27 total sites, grouped in five main clusters on the subject parcel. These sites include seventeen habitations, five canoe sheds, one shrine, three burials, and numerous terraced areas. Site 2382, which has been previously disturbed by bulldozing and land clearing by the former landowner for a SFR, is the site of the proposed home. Even though the project will encompass a pre-disturbed site, it will have an overall impact on the landscape, similar to a recent project in Kau (*Carroll Single Family Residence CDUP HA 3002*). With the exception of this site, the current landowner plans to preserve all of the archaeological features on the parcel. A Burial Treatment Plan and Archaeological Preservation Plan are currently under review by the HPD.

Staff notes, supporting structures appear to be less than 30 feet from burials. Burials are present in close proximity of the proposed home site. Staff further notes remnants of the former landowners grave has been identified on old maps, however it has not been identified within the application. Staff notes there are significant comments and concerns regarding the applicant's evaluation of the cultural sites and the lateral trail. Comments received point out deficiencies with the Cultural Impact Assessment such as inappropriate site boundary identification, lack of adequate consultation, inappropriate significance determinations of sites, lack of recognition of the important Traditional Cultural Properties (TCP) to the Hawaiian community and inappropriate criteria utilized to define TCPs. Although these concerns were raised late in the review process and after the Department accepted the Environmental Assessment, Staff believes these comments to be from reputable sources and is concerned whether cultural issues have been sufficiently addressed at this time. Although these matters were suppose to be covered under the approved EA, Staff is just now beginning to hear from other native Hawaiian practitioners who are strongly opposed to the project.

In addition, it has been determined that there is a coastal trail traversing the property owned by the State of Hawaii pursuant to §264-1(b) HRS. Due to its coastal location, this trail section may be considered a potential alignment by the National Park Service for the Ala Kahakai National Historic Trail designated by Congress on November 13, 2000. The National Park Service is currently developing a combined Comprehensive Management Plan /Environmental Impact Statement for the Ala Kahakai.

It is Staff's understanding that the proposed project area is well known and established as a recreational area. According to various sources, a fishing shrine is present, there is an off shore surf spot, the Boy Scouts and other community organizations and individuals have utilized the subject area for camping. The towering Kohala shoreline cliffs afford the public very little opportunity to gain access to the ocean. Islanders have utilized the shoreline fronting the proposal for generations for ingress and egress to the ocean

resources. Native Hawaiians used this site as a point of access and egress for their canoes, as evidenced by the canoe haies located next to the shore. The proposed residence is being proposed immediately adjacent to this site, and it appears that public access would be directed away from this area, thus potentially limiting access to one of the few beaches on this coastline, and directing the public to areas of the shoreline that may not be considered as safe as this site.

With the development of the site, Staff is fairly confident that there will be conflicts between the property owner and the general public who have enjoyed use of the area for generations. In addition, there is the added concern of moving people onto the State land and the impact that might have on natural and cultural resources. While Staff does not believe that public use of the land, or cultural matters outweighs Mr. Cohen's right to use his property to build a residence, Staff is obligated to ensure that impacts and conflicts are minimized by the proposed project. In this regard, Staff is concerned that the proposed location of the residence may result adverse impacts on the landscape and on public enjoyment of the environment. The applicant notes that the site is ideal because grading work previously disturbed it. Even so, staff does not agree that this is the most ideal location for a residence, from a broader point of view. For instance, if the Ala Kahakai Trail becomes operational, the residence will impose upon the wilderness nature of this stretch of coastline seriously impacting hikers using this rugged coastal area. Furthermore, the site although disturbed, is adjacent of a significant archaeological complex, and there is the aforementioned beach located adjacent to the house site. This does not appear to be an appropriate use of the area and is not consistent with Conservation District criteria which requires that *"The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding area, appropriate to the physical conditions and capabilities of the specific parcel or parcels."*

Because the project is designed to be self-supportive, the applicant is expected to install an individual wastewater treatment facility treatment. This consists of an aeration-type treatment plant that treats water to the secondary level. It is then chlorinated and discharged for beneficial re-use in irrigation or to a drain field of crushed rock. Despite best efforts, the treated wastewater will ultimately discharge into Class AA marine waters. To the best of Staff's knowledge, these waters are pristine due to the lack of any development seaward of the highway.

Wildfire is also an important concern in this part of North Kohala, which has burned on a number of occasions. The property is surrounded by vacant brush land with alien drought resistant plants intermixed by bunchgrass, and kiawe that produces fast moving and intense fire conditions. The strong onshore winds that persist every day make this area prone to wildfires. A private parcel to the nearby north was seriously burned just a few years ago. According to the applicant, a propane-fueled generator will provide power to the proposed residence. Staff notes that fire-starting fluids may increase the

threat of wildfire in an environment that is already prone to such events. This would endanger applicant's land as well as surrounding state unencumbered lands.

The Department of Land and Natural Resources is in receipt of a petition signed by approximately 7,000 individuals calling on the State and County to stop all development along the Kohala coast until studies of the coastline can be completed. Although this petition was circulated in 1988, Staff believes that it has relevance to the present action. In addition, this area has been identified as an area of *Natural Beauty* by the County of Hawaii General Plan. The County identified goals, policies and standards for these areas of which the proposal appears to be incompatible with such as maximize opportunities for present and future generations to appreciate and enjoy natural and scenic beauty and not allowing incompatible construction in areas of natural beauty.

In addition, a Hawaii County Commission established by Hawaii County ordinance 05-166 has identified the subject property for County/Partnership consideration to purchase. The Commission has recognized and listed the subject property as properties and/or entitlements for purchase by the County through partnership with other public agencies (**Exhibit 26 & 27**).

Although the State was given the opportunity to purchase the parcel in 1999, unlike now, there were no tools such as legacy land funding or identified partnerships to even entertain the idea of acquisition.

In conclusion, Staff believes that the BLNR should not approve the project, as it has been proposed. Staff believes that BLNR's decision to approve the proposed project would be pre-mature. Should the proposal be implemented, it will significantly change the area. In addition, based on these recent concerns, it may be appropriate to re-evaluate alternatives such as no structures, or relocation of any structure away from any cultural sites or trails or complete preservation of the parcel for cultural purposes. Another alternative could involve a land exchange, conservation easement or outright purchase. It is unfortunate that alternatives such as these were not considered in the application and Staff should have required a more rigorous consideration of such alternatives early in the application process.

Although the application was subject to a complete review under Chapter 183C and 343, HRS, Staff has received late comments that shed some doubt on the appropriateness of this project in its current form. Staff believes that this project should not go further at this time.

Numerous letters were received on behalf of the Applicants to try to justify the project in response to late comments received on this application. These letters failed to address the substantive issues raised by the letters sent in by community members and citizen groups. OCCL Staff responded to applicants' counsel in a letter dated April 11, 2006 (**Exhibit 28**)

in which Staff explained that comments were not solicited in an attempt to undermine the project. Staff was responding to inquiries received through the Chairperson's office. The fact that these comments were received late in the application process does not mean that they should not be addressed. Staff is obligated to consider all views and concerns up until the time of the BLNR hearing. The OCCL staff has the onerous duty of evaluating the appropriateness of a project based on a complete and comprehensive assessment that has been assembled from acceptance of the application to the writing of this report. In conclusion, Staff believes that the project, as proposed, would not be consistent with Conservation District objectives.

Based on the above discussion and information received, Staff recommends as follows:

RECOMMENDATION:

Staff recommends that the Board of Land and Natural Resources **deny** this application for a Single Family Residence located at Pao'o, North Kohala, Island of Hawaii, TMK: (3) 5-7-001:005, due to the following reasons:

A.

1. Staff believes that the project as proposed will have an adverse effect on the open space and rugged character of this part of the North Kohala Coast;
2. Staff believes that the project as proposed will have an adverse impact on the Ala Kahakai Trail as well as customary access to the sea by members of the public;
3. Staff believes that the project will jeopardize the integrity of the many archaeological and cultural sites in the vicinity of the project;
4. Staff is concerned over the plan to redirect public access to adjacent State lands;

B.

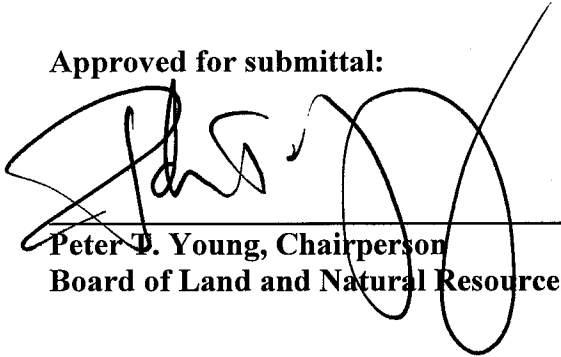
1. Staff further recommends that the applicant consider more fully investigating a land exchange, conservation easement, purchase by a third party, or relocation of the residence away from the shoreline, the Ala Kahakai Trail and the archaeological sites.

Respectfully submitted,



K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Land

Approved for submittal:



Peter D. Young, Chairperson
Board of Land and Natural Resources

HAWAII

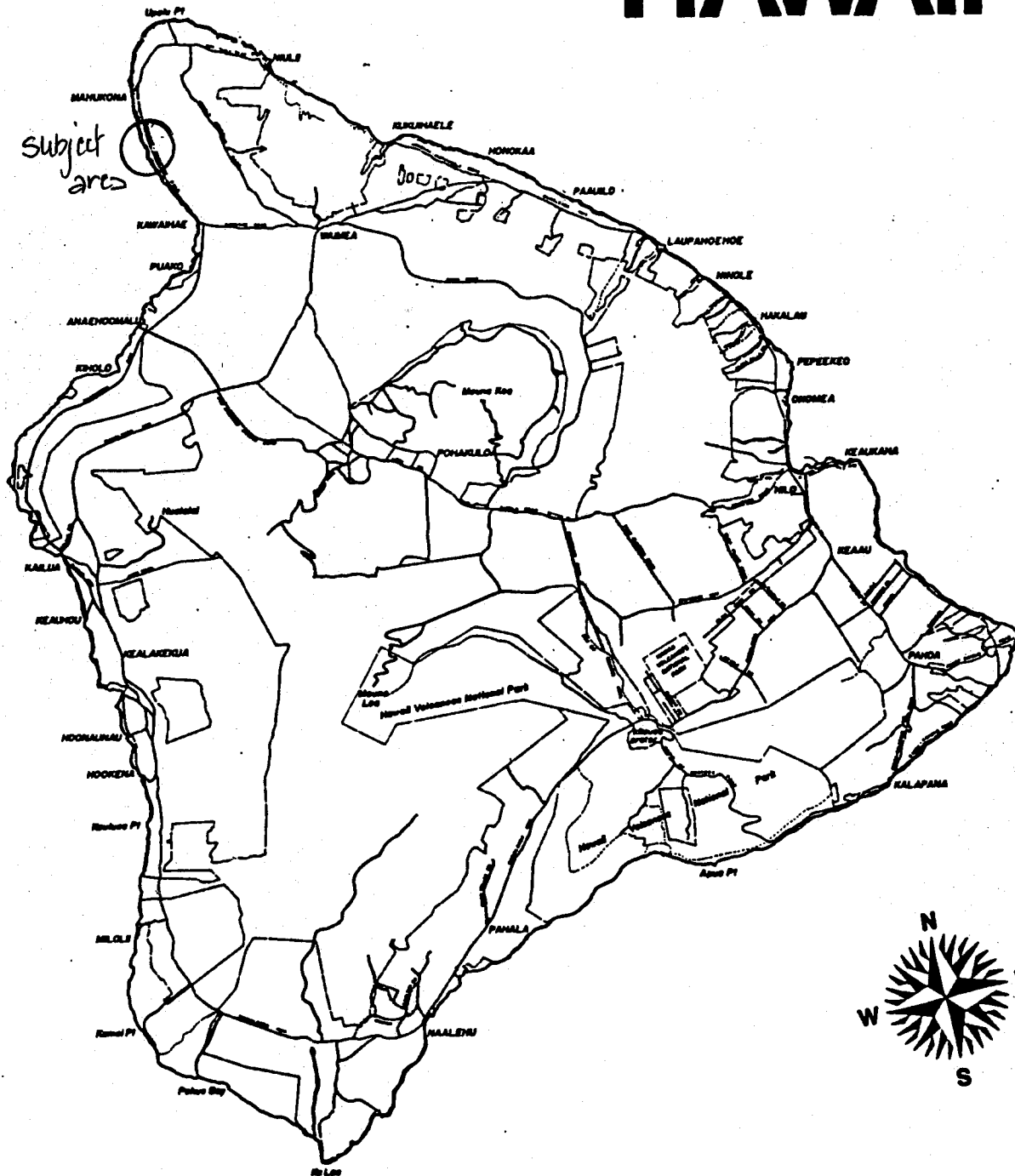


EXHIBIT |

RECEIVED
Department of the
Attorney General

True North
SCALE: 1 in. = 200 ft.

EXHIBIT 3

NOTE:

Azimuths and coordinates referred to "Hawaiian Plane Coordinate Grid System" (Zone 1).

..... denotes access permitted

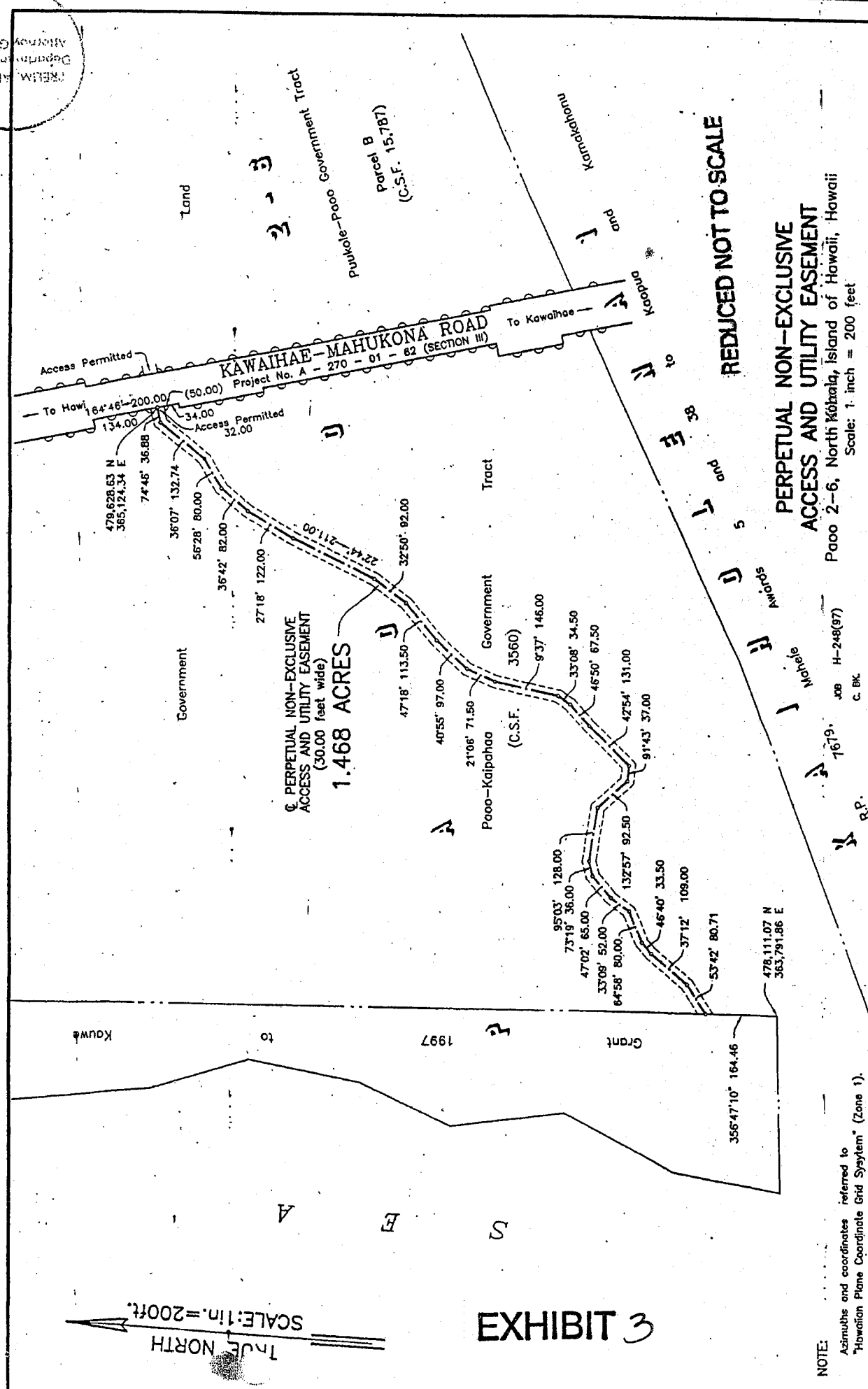
denotes no vehicle access permitted

TAX MAP 5-7-01: Por. 21

C.S.F. NO. 23,153

**SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII**

JGL September 14, 2001



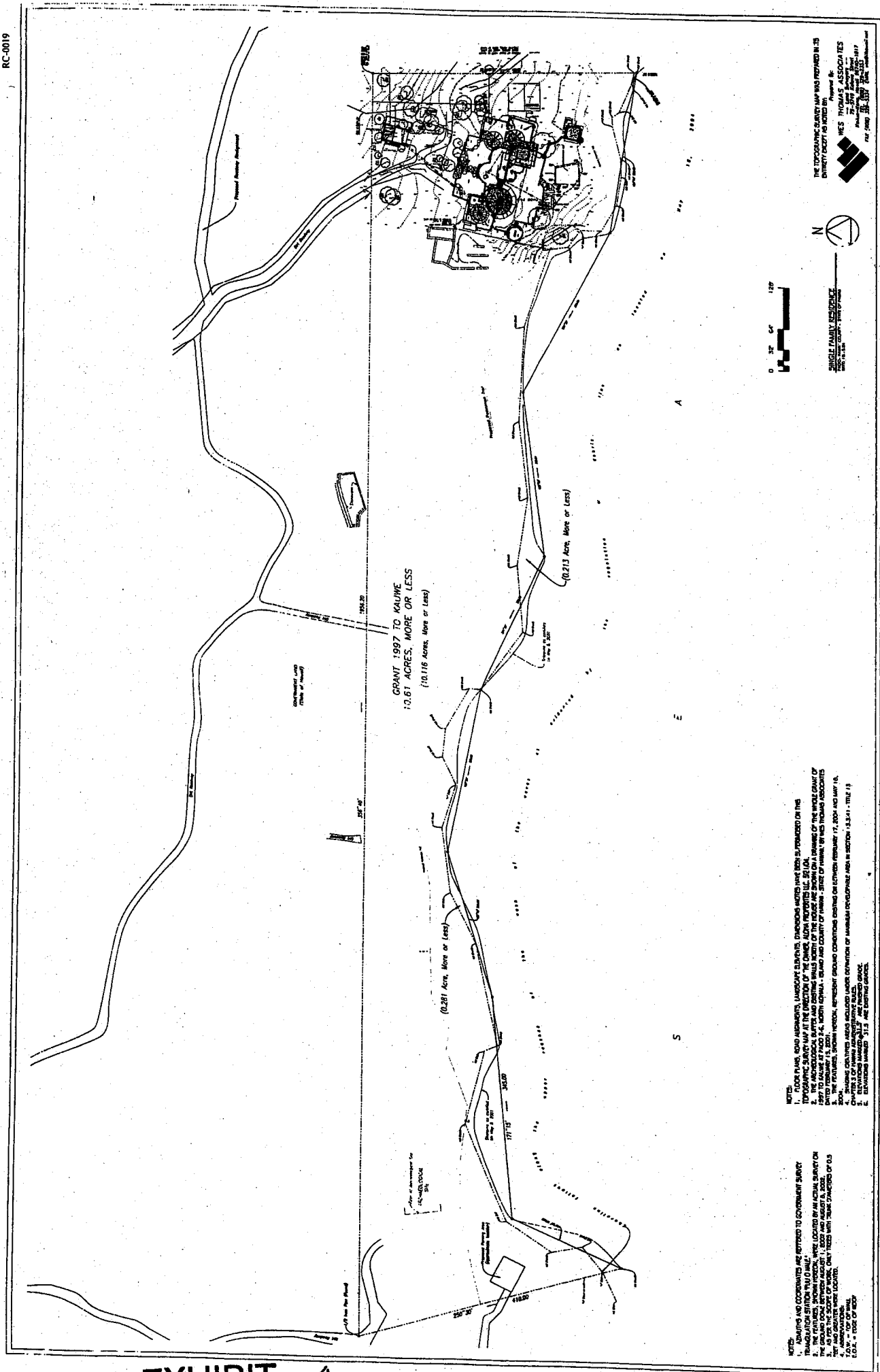


Figure 4. Plan view of project area showing the location of the proposed residence.



EXHIBIT 5

This is a black and white aerial photograph of a landscape. A road or path runs diagonally from the upper left towards the center. The terrain is textured and appears to be covered in vegetation or low-lying plants. In the lower right quadrant, there is a small, irregularly shaped area circled with a hand-drawn line. An arrow points from below towards this circled area. The overall image has a grainy, high-contrast quality typical of older aerial photography.

Highway 270

View from
Road

View angle 2

Building Site

1,850'

View angle 1

View from Road



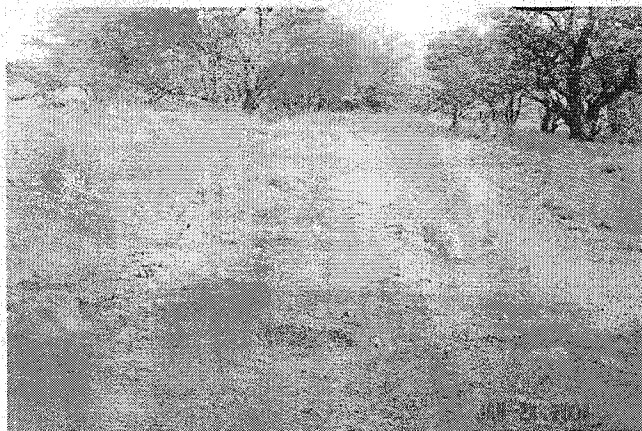
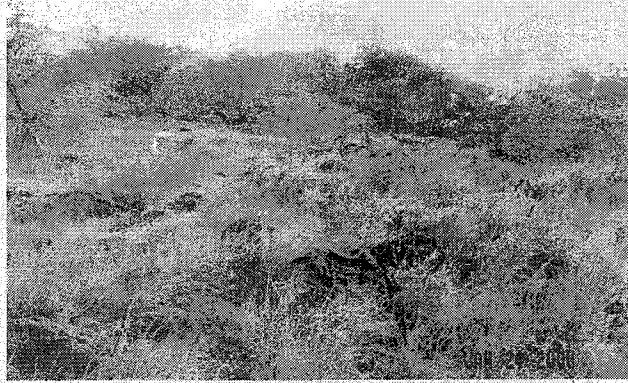
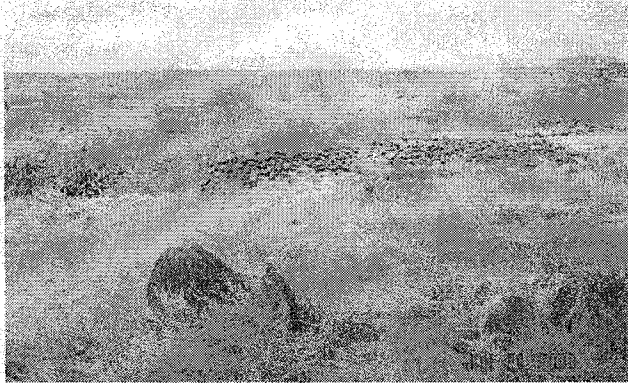


EXHIBIT 6

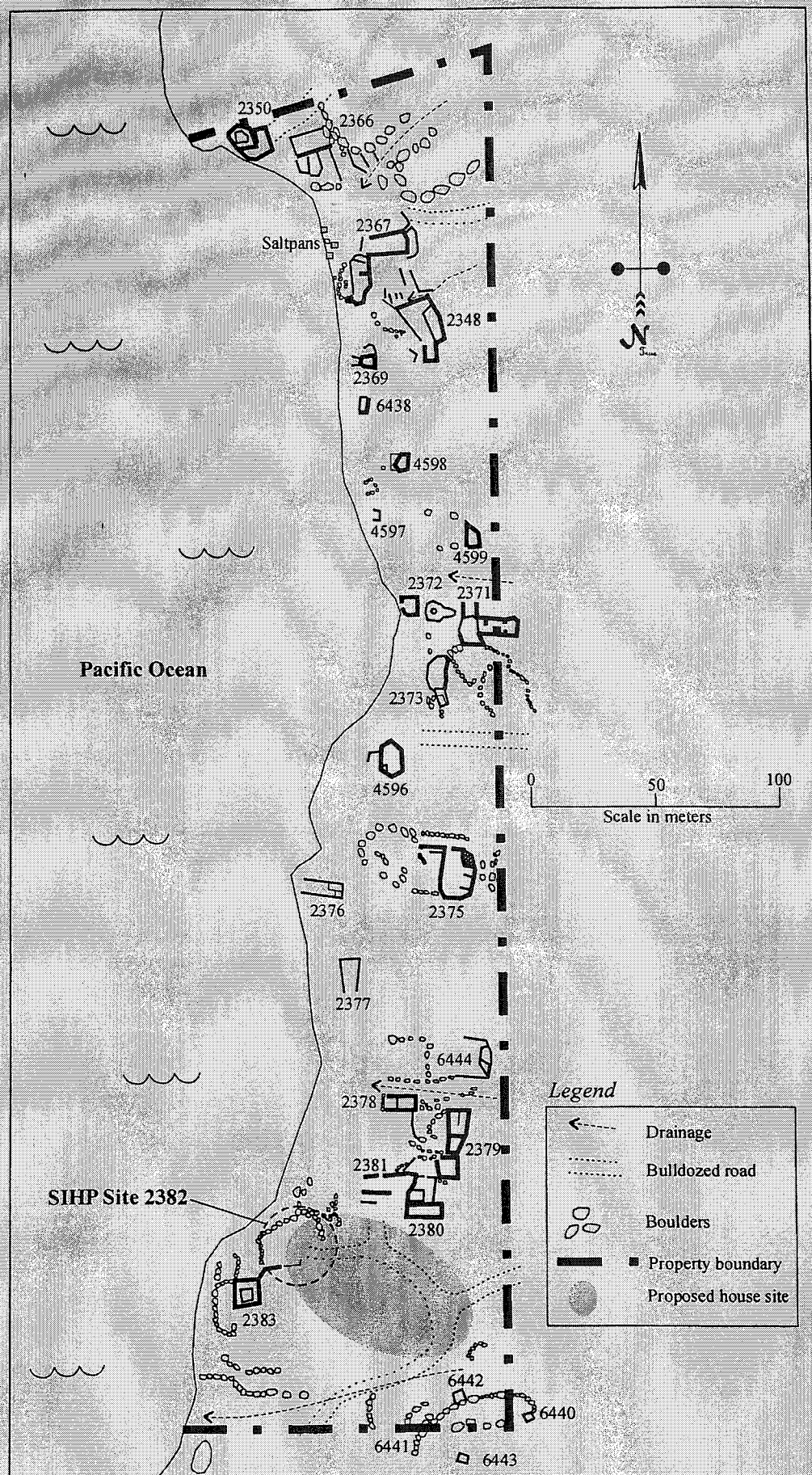
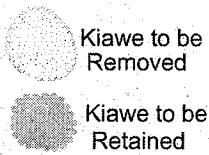
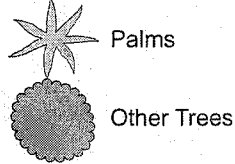


Figure 2. Project area site location map (adapted from Hammatt and Folk 1980).

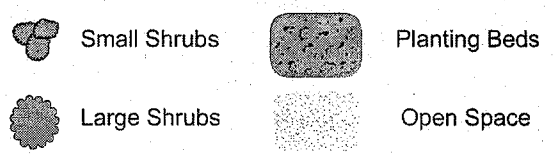
EXISTING TREES



NEW VEGETATION

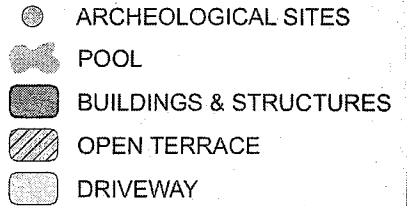


For Species List See Palette Below

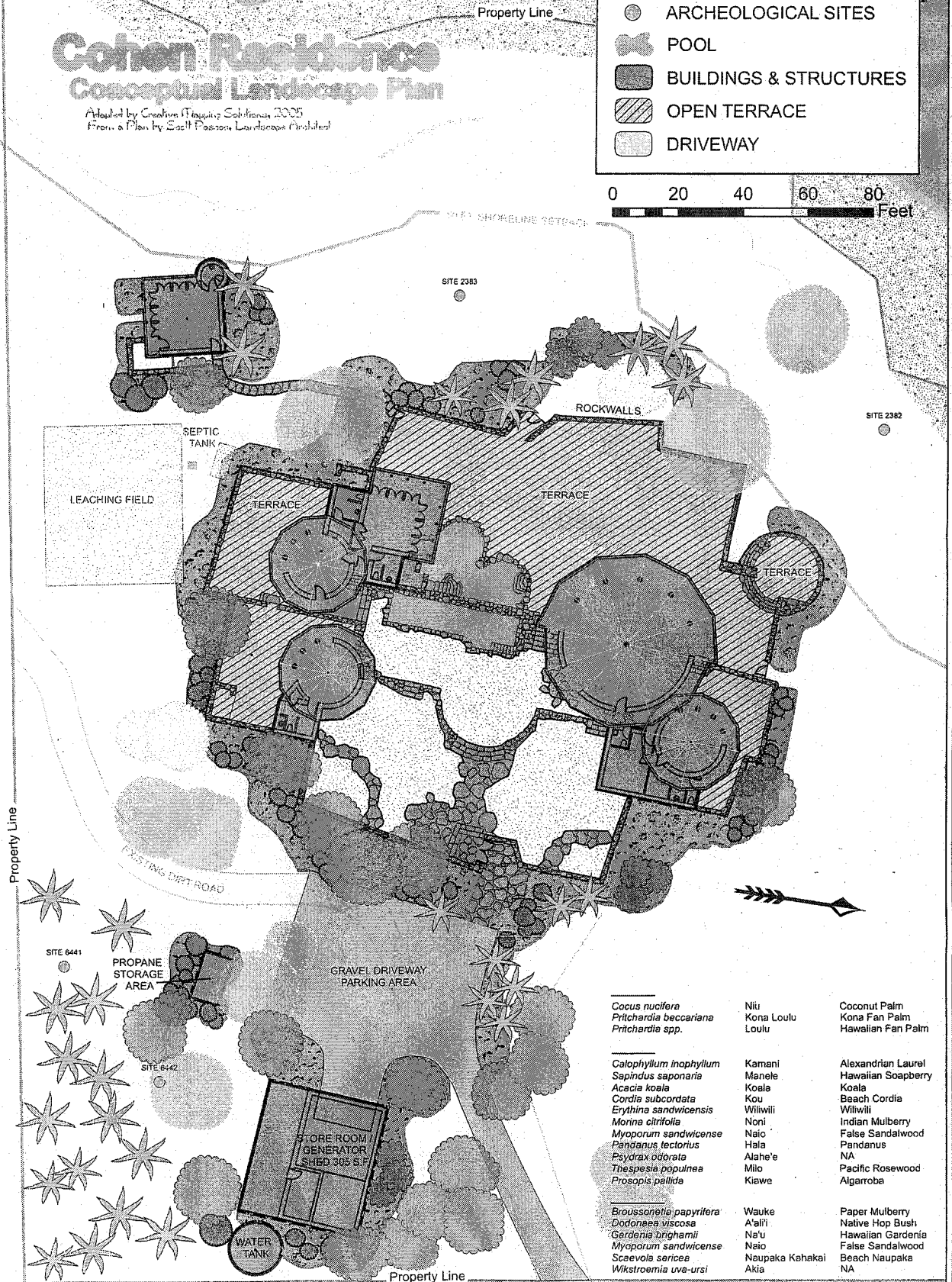


Cohen Residence Conceptual Landscape Plan

Adapted by Creative Planning Solutions 2005
From a Plan by East Position Landscape Architects



0 20 40 60 80 Feet



Coccus nucifera
Pritchardia beccariana
Pritchardia spp.

Niu
Kona Loulu
Loulu

Coconut Palm
Kona Fan Palm
Hawaiian Fan Palm

Calophyllum inophyllum
Sapindus saponaria
Acacia koala
Cordia subcordata
Erythrina sandwicensis
Morina citrifolia
Myoporum sandwicense
Pandanus tectorius
Psychradia odorata
Thespesia populnea
Prosopis pallida

Kamani
Manele
Koala
Kou
Wiliwili
Noni
Naia
Alahe'e
Milo
Kiewe

Alexandrian Laurel
Hawaiian Soapberry
Koala
Beach Cordia
Wiliwili
Indian Mulberry
False Sandalwood
Pandanus
NA
Pacific Rosewood
Algaroba

Broussonetia papyrifera
Dodonaea viscosa
Gardenia brighamii
Myoporum sandwicense
Scaevola sericea
Wikstroemia lute-ursi

Wauke
A'ali'i
Na'u
Naio
Naupaka Kahakai
Akia

Paper Mulberry
Native Hop Bush
Hawaiian Gardenia
False Sandalwood
Beach Naupaka
NA



EXHIBIT 9

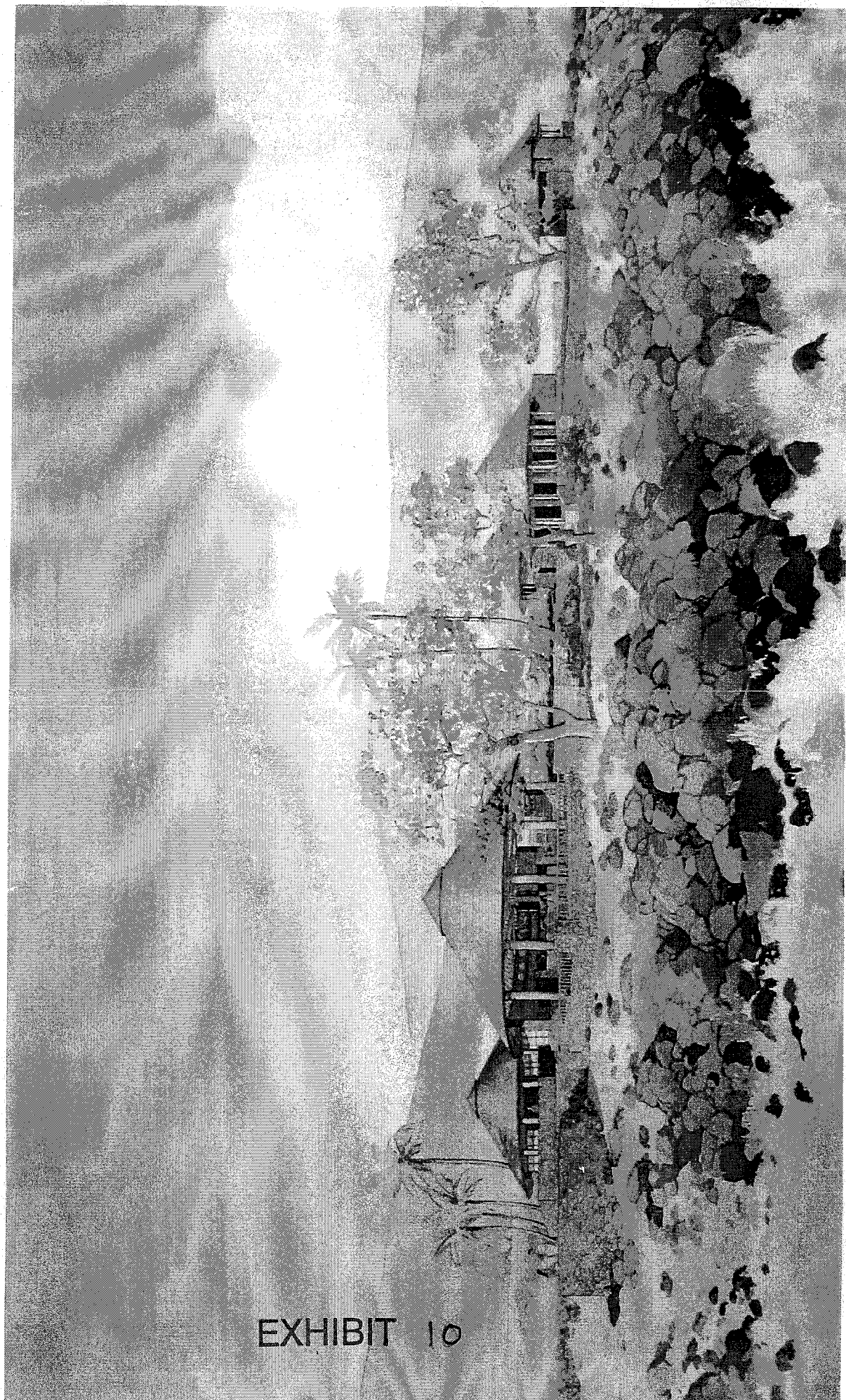


EXHIBIT 10

Single-family Residence
Pao'o, Hawaii

rendering by Sarah S. Brannen

Cohen Residence



PACIFIC OCEAN

Property Line

Legend

- ARCHEOLOGICAL SITES
- ~ SHORELINE (DEC, 2004)
- ~ 50 FT. SHORELINE SETBACK
- ~ PROPOSED TRAIL
- LAWN & GARDENS
- POOL
- BUILDINGS & STRUCTURES
- OPEN TERRACE
- PARKING AREA



EXHIBIT 11



EXHIBIT 12

EXHIBIT 13

55206

'06 APR 10 A8:42

April 5 2006

DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

Roy A. Vitousek III
Direct Line: (808) 329-5811
Direct Fax: (808) 326-1175
E-mail: rvitousek@ca des .com

Peter Young, Chair
Board of Land and Natural Resources
P. O. Box 621
Honolulu, Hawaii 96809

Re: Conservation District Use Application HA-3269
TMK: (3) 5-7-001:005
Applicant: Jonathan Cohen, Aloha Properties, LLC

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2006 APR 11 A 9:39
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Dear Mr. Young:

I am enclosing:

- 1) A response to the undated letter from Fred Cachola and Gail Byrne which we received from Tiger Mills of the Office of Conservation and Coastal Lands on March 31, 2006.
- 2) A response from Dr. Robert Rechtman of Rechtman Consulting to the critique of the cultural impact assessment by Kēhaunani Abad, Ph.D. on behalf of Mr. Cachola and Ms. Byrne.
- 3) A copy of a March 20, 2006, email from Tiger Mills to Fred Cachola and Gail Byrne inviting them to comment on the Cohen Conservation District Use Permit Application.

Just so there is no confusion as to the Applicant's position regarding public access and the cultural impact assessment, may I offer the following:

1. Public Access

Applicant supports public access to and along the shoreline. Applicant and its representatives have met with representatives of Na Ala Hele's Division of the DLNR and the Ala Kahakai federal trails project and they have specifically delineated and identified an alignment for a coastal trail. This alignment is identified in the Conservation District Use Permit (CDUP) application and Applicant will grant an easement over this alignment for public pedestrian access along the coast.

C S

EXHIBIT 14

Cades Schutte Building
1000 Bishop Street, Suite 1200
Honolulu, Hawaii 96813
Tel: 808.521-9200
Fax: 808.521-9210
www.cades.com

Kona Office
75-170 Hualalai Road, Suite 303
Kailua Kona, Hawaii 96740
Tel: 808.329-5811
Fax: 808.326-1175

The jeep trail in this area runs primarily on State-owned land mauka of the private property. There is a portion in the southern part of the property where the jeep trail crosses the privately owned land. Applicant had, as part of the burial treatment plan approved by the Hawaii Island Burial Council, proposed realigning the jeep trail around identified burials also located on State land so that there will be a continuous jeep trail on State land so that it does not impinge onto the buffer zone for burials.

Because the private parcel is surrounded by State-owned land, including State-owned oceanfront land on the north and south sides of the subject property, the development of a single family home will in no way interfere with public access to and along the coastline.

In the public hearing held on January 24, 2006, several members of the public who fish, surf, and dive in the waters off of Pao'o appeared and testified in favor of the proposed project based on the landowners' recognition of the importance of access to the ocean for surfing, fishing, and related activities. No one testified against the proposed CDUP.

2. Cultural Impact Assessment

The Board of Land and Natural Resources previously granted a CDUP to build a single family residence in the same location proposed in this application. The potential impacts of the proposed development in the conservation district were analyzed in the context of that application.

Nonetheless, the current applicant performed a thorough archaeological evaluation and cultural impact assessment as part of the present application. The Pao'o property is rich with archaeological and cultural sites. Applicant has proposed to preserve all sites except the remnants of one site already destroyed by grading on the property conducted by the former owner. Dr. Robert Rechtman proposed data recovery with respect to this site, which data recovery was completed and approved by the DLNR.

As discussed, there are burials adjacent to the subject property. Applicant has gone through the process of having a burial treatment plan prepared, submitted to, and approved by the Hawaii Island Burial Council. As you are aware, as part of the Burial Council process, Applicant and consultants publish the fact of the application, search for and contact lineal and cultural descendants, prepare a proposal for the Hawaii Island Burial Council and appear in hearings before the Council with respect to the burial treatment plan. Applicant followed these procedures, identified lineal descendants, prepared a burial treatment plan, and sought and obtained approval from the Hawaii Island Burial Council. This process clearly constitutes a significant component of a cultural impact assessment.

Further, a cultural impact assessment was prepared as part of the archaeological study submitted in conjunction with CDUP application. The archaeological and cultural sites on the

property were clearly identified as they were with in the previous application, and it has been recommended that they all be preserved in place.

A thorough assessment of cultural, natural, and historical resources on the property was conducted. A thorough assessment of identifying native Hawaiians and others who exercise customary and traditional rites on the property has been completed. Meetings with lineal descendants, involved individuals, and responsible agencies have been conducted on the property. Specific mitigation measures have been identified, articulated, and proposed to the appropriate agencies, and, in many instances, completed as part of this application process.

There was a public hearing relative to this application. Lineal descendants, native Hawaiians, surfers, fishermen, hikers, and others appeared at the public hearing and offered testimony in support of the project based on the specific mitigation measures proposed. No one appeared at the public hearing and took the position that the cultural impact assessment was incomplete or inadequate and/or that there were cultural, natural, or historical resources on the property which were not identified and which could be adversely impacted by the proposed single family residence.

Applicant has met and walked the property with native Hawaiians who are identified as lineal descendants of the people of Pao'o. One of the lineal descendants, Mr. Arthur Mahi, has asked Mr. Cohen to consider himself to be part of the families that have lived in and cared for Pao'o for generations. The Cohen has accepted this responsibility, meeting face-to-face with the lineal descendants on the land.

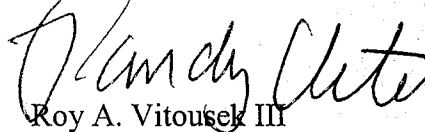
An issue has come up as to the site identified as Site 2383. This site was identified in the archaeological studies performed before the Cohen family purchased the property as a "probable shrine." This site classification was accepted by DLNR/SHPD. This site will in no way be damaged or destroyed by the proposed home. It is being preserved in place and protected by a buffer zone.

The Cohen family believes that they have made a sincere effort to address all the potential issues associated with building a single family home at Pao'o. They were aware at the time they purchased the property that there was a previous CDUP approved by the Board. They have made an effort to design a home that fits the surroundings and which does not adversely impact the cultural and environmental resources in the conservation district.

Kimberly Tiger Mills
April 5 2006
Page 4

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Roy A. Vitousek III", followed by a horizontal line.

Roy A. Vitousek III

for

CADES SCHUTTE

A Limited Liability Law Partnership

RAV:bah

cc: Jonathan Cohen
Mooers Enterprises, LLC
Geometrician Associates, LLC

ImanageDB:643484.1

April 5, 2006

Roy A. Vitousek III

Direct Line: (808) 329-5811

Direct Fax: (808) 326-1175

E-mail: rvitousek@cade s.com

Kimberly Tiger Mills
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
P. O. Box 621
Honolulu, Hawaii 96809

Re: Conservation District Use Application HA-3269
TMK: (3) 5-7-001:005
Applicant: Jonathan Cohen, Aloha Properties, LLC

Dear Ms. Mills:

This is a response to the submission from "Mālama Kohala Kahakai" which we received from you by email on March 31, 2006. The Board hearing in this application is set for April 13, 2006.

Applicants (the Cohen family and Aloha Properties, LLC) have made a sincere effort to comply with every requirement of the Conservation District Use Permit (CDUP) application process.

You will recall that the Board of Land and Natural Resources has previously granted a CDUP to build a single family home on this property (CDUP HA-1948). Nonetheless, Mr. Cohen and his family went through and essentially redid most aspects of the environmental and cultural assessments, met and walked the property with lineal descendants of persons associated with the ahupua'a, met with concerned individuals including recreational and cultural users, met with representatives of relevant State and County of Hawaii agencies, finalized an archaeological mitigation plan, obtained Burial Council approval of the burial treatment plan, and developed access plans in a real effort to identify and mitigate any and all potential adverse impacts associated with building a single family home. Applicants resubmitted an Environmental Assessment (EA), a CDUP application, and participated in a public hearing in South Kohala on January 24, 2006. All testimony at the public hearing was supportive of the proposed single family home. No one purporting to represent Mālama Kohala Kahakai or any of the other groups listed by Mālama Kohala Kahakai commented on the EA, made timely comments on the CDUP application, or attended the public hearing.

In reviewing the letter from Mr. Fred Cachola and Ms. Gail Byrne, it is important to be aware that Mr. Fred Cachola, who signed the letter on behalf of Mālama Kohala Kahakai, has been aware of Applicants' intention to build a single family home on this property and had participated in pre-application meetings since at least 2002. Specifically, Ms. Cachola was a member of the board of directors of an organization called "'Ike 'Aina" which approached Mr. Cohen shortly after he purchased the property and proposed that 'Ike 'Aina be given the responsibility for managing archaeological sites on the subject property. In October 2002, Mr. Cohen and counsel for Mr. Cohen met with Mr. Cachola, Suzanne Case, and Tom Lenchanko (then directors of 'Ike 'Aina) on the subject property and discussed Mr. Cohen's plan to build his single family home and a potential role for 'Ike 'Aina in managing the cultural and archaeological sites on the property. Mr. Cachola personally and individually represented to Mr. Cohen that he supported Mr. Cohen's objective of building a single family home on the property and that he, Fred Cachola, would assist Mr. Cohen in community relations and in managing the archaeological sites. Suzanne Case referred Mr. Cohen to an architect in Honolulu, who she believed might help him in designing a home.

Shortly after the site visit in October 2002, 'Ike 'Aina presented the Cohens with a draft contract. A copy of this draft contract is attached to this letter. In this draft agreement, 'Ike 'Aina was proposing that the Cohens give 'Ike 'Aina the authority to manage all aspects of public access, recreation, education, and the like with respect to the archaeological sites and the subject property. The contract expressly acknowledges and understands that Mr. Cohen will be building a single family home on the property. Mr. Cachola represented that he would be principally responsible for performing on the contract on behalf of 'Ike 'Aina insofar as he was relocating from Honolulu to North Kohala.

Jonathan Cohen did not enter an agreement with 'Ike 'Aina. Unfortunately, word got back to Mr. Cohen and his consultants that Mr. Cachola had held a community meeting and had made representations that he would be managing the property and that there would be school groups and the like using the property as a cultural resource center under his direction. These representations were not consistent with Mr. Cohen's understanding of the status of the discussions with 'Ike 'Aina and raised concerns as to the advisability of proceeding with an agreement with 'Ike 'Aina.

At the same time, the Cohen family, through their archaeological consultant, Rechtman Consulting, was involved in evaluating a proposed mitigation plan for the archaeological sites on the property and preparing for the Burial Council process with respect to certain burial sites located near the subject property. During the process of identifying the lineal and cultural descendants of the people who lived and who are buried at Pao'o, Dr. Rechtman identified specific families and individuals who were lineal descendants of the persons who built, lived in, and used the structures at Pao'o and whose ancestors are buried there. Mr. Rechtman walked the property with the lineal descendants and received direct expressions from the descendants that

they were very concerned about Mr. Cohen conferring responsibility for the sites to an organization which did not include lineal descendants from Pao'o and which was made up primarily of off-island directors. The lineal descendants, specifically Mr. Arthur Mahi, was very clear with Mr. Cohen that decisions as to how the sites are treated, restored, and opened to the public were decisions which should be made in conjunction with the lineal descendants of the people who built and lived in those structures. Mr. Mahi told Jonathan Cohen that he should view himself not as the owner of the property but as part of the family who live there and take care of it. Mr. Mahi explained that he and members of his family should be involved in these decisions and that if the Cohen family was going to build their home and live on the property, they should act like members of the family and make decisions with respect to how the property is used, protected, and viewed in conjunction with the family.

Mr. Cohen and his daughter walked the property for several hours with Mr. Arthur Mahi and they came to an understanding about working together, the Cohen family and the family of the lineal descendants, in preserving and protecting the property. It was and is the Cohen family's belief that respect for the opinions, concerns, and needs of the families who are lineal descendants of the people who lived on this property is of primary importance to their relationship with the land. The Cohen family supports public access to and along the shoreline. However, the Cohens respect Mr. Mahi's concerns about unrestricted public access to the archaeological sites. While the Cohen family has hoped there would eventually be appropriate public access to the archaeological sites for purposes of study, learning, cultural appreciation, etc., Mr. Mahi has advised the Cohens that it is inappropriate to just open up the site to unrestrained public access and that the sites must first be cared for in an appropriate manner and by appropriate people.

Mr. Cohen is disappointed that Mr. Cachola has opted to attack his family's plan for a home after he had specifically proposed, in writing, to assist his family as part of 'Ike 'Aina in developing their home and a culturally appropriate treatment of the archaeological sites. It may be that because lineal descendants were identified and are treated as the primary consulting parties with respect to the sites, instead of Mr. Cachola, that he is now, at this very late date, attacking Mr. Cohen's plan. This hardly seems consistent for someone who is professing to value and model mutual respect, consistency, and a Hawaiian approach to community issues. The Cohen family has not made any written agreements with any party group relative to his single family home and the Pao'o property. Mr. Cohen is listening to the concerns of the lineal descendants. Mr. Cohen has and will continue to listen to the concerns expressed by members of the community who have used the property for fishing, surfing, along-shore access, and the like. Mr. Cohen has gone far beyond what other similar applicants have done to insure that the concerns and issues of native Hawaiians and other recreational users are protected in the context of his single family home.

The submission by Mālama Kohala Kahakai purports to state a preference for public acquisition of the Cohen property or acquisition by a land trust or similar entity. The property was specifically offered to the State of Hawaii in September 1999 for sale or land exchange before the Cohen family acquired the parcel. See copy of September 10, 1999, letter to then Chair, Timothy Johns attached hereto. At no time did the State take any action to acquire the property.

With respect to other potential purchasers, it seems highly questionable that any legitimate community or land trust organization would participate in acquisition of the property after a blatant attempt to undermine the existing owner's legitimate plans and to devalue the property to the extent it has. Generally, legitimate land trusts succeed based on cooperation with the landowners whose properties they seek to acquire. Any effort to devalue the property by intervention in the land use process significantly undermines the integrity of the land trust. This is particularly true where one of the individuals involved in the effort to seek denial of the landowner's application had previously, in the context of another organization which described itself as "a native Hawaiian land trust" (see draft agreement attached hereto), supported the proposed single family home provided the owner entered a contract with the nonprofit entity of which he was a member. One wonders whether Mr. Cachola disclosed this fact to the various entities he purports to represent in this letter. He certainly did not disclose these facts in his letter to the Department. We also wonder whether the organizations listed knew their names would be used in conjunction with opposing this application. Specifically, the Hawaii Island Land Trust, the New Moon Foundation, and Malama Kai Foundation were contacted and advised us that they were not aware their names were being used in any way or for any purposes associated with opposing the Cohens' CDUP application.

With respect to the specific points raised by Mr. Cachola and Ms. Byrne, we offer the following (using the same numerical references):

I. The proposed single family home will not damage or destroy any pre-contact Hawaiian archaeological site. Whatever was at Pao'o before the Cohens build their home will be there after. The statement, "Allowing home sites to dissect and disturb both physically and visually . . ." is not clear. There already are several house sites along the coast between Kawaihae and Upolu Point. The Pao'o property is a Grant. That is, the property was granted by the Hawaiian government to a private individual after the Mahele so that the individual could have a house site. The structures on the property show that the area has been used for house sites for probably hundreds of years. The lineal descendants of the people who built and lived in the house sites on the property do not object to the Cohens building their home there.

II. No sites are being damaged by the construction of the house. Whatever is there now will be there after construction. All sites in proximity to

the proposed home were identified and described in archaeological studies, which were accepted by DLNR/SHPD. Because no sites will be destroyed or modified if there is any change in the assessment or categorization of a particular site at some point in the future, it will not affect the proposed plan or the sites themselves. Buffers are in place and will be respected.

The statement to the effect that the house is being built "on top of a heiau!" is not true and is intended to be inflammatory.

III. There are several areas between Kawaihae and Upolu Point where there are single family homes makai of Akoni Pule Highway. These include Hawaiian Homelands, Kohala Waterfront, Mahukona, Pua Kea Bay, etc. The letter ignores the presence of other single family homes makai of Akoni Pule Highway and argues that this home would set a precedent.

The letter appears to demonstrate a misunderstanding of much of Mr. Cohen's CDUP application. If there is any suggestion in the application that there is a precedent, it is the fact that the Board previously granted a CDUP for a single family home in the same location as proposed by the Cohens (CDUP HA-1948). This is a relevant precedent.

Mr. Cohen's sister-in-law built a home near Puako, which was not in the Conservation District. She did go through a CDUP application process for access over State-owned Conservation-classified land. Through that process, Mr. Cohen came to appreciate the importance of protecting the resources of the Conservation District and the stringent permitting requirements. Nowhere does the application suggest that Mr. Cohen's sister-in-law's home near Puako in any way entitled the Cohens to build at Pao'o.

Any argument about the effect of granting another CDUP relative to Pao'o might have on other parcels elsewhere is speculative. The Board will review each application on its own merits.

IV. The Application clearly acknowledges that members of the public have fished, surfed, and hiked along the coastal areas of and makai of the property. Mr. Cohen has not observed people "worshiping at ku'ula" nor seen any evidence of this, but it may well occur. We note that the letter is carefully worded and does not say that any identified native Hawaiian worships at any ku'ula at Pao'o.

The proposed home will affect a very small portion of the property. No cultural sites will be disturbed. The coastal trail runs makai of the proposed

home and the jeep road runs mauka and will provide access for surfing, fishing, hiking, etc. Mr. Cohen's representatives met with and walked the coastline with State and Federal trails specialists, with State surveyors, and coastal specialists, and with Mr. Jerry Rothstein. Mr. Cohen and his consultants met with fishermen, surfers, hikers, etc. to discuss the proposed house and any effects on the recreational resources. The Cohen family support public pedestrian access along the shoreline and will grant a public access easement over the coastal trail as delineated.

Surfers, fishermen, and native Hawaiians came to the duly noticed public hearing on January 24, 2006, and testified in favor of the Cohen family's plans. Neither Mr. Cachola nor Ms. Gail Byrne (nor anyone else) offered any testimony in opposition to the proposed home.

V. The letter does not directly state that the individuals who signed the petition in 2000 or the North Kohala businesses and organizations are requesting that the BLNR deny Mr. Cohen's application. Again, the letter is carefully worded. In communication with representatives of the entities listed, we have been advised that the entities were not aware of the Cohen CDUP application, did not intend to oppose it, and have not authorized anyone to oppose the CDUP application on their behalf.

Mr. Cohen does not doubt that many people generally support open space and preservation of cultural resources. Mr. Cohen does doubt that the 30 entities and organizations passed resolutions or made official statements requesting that the BLNR deny his application. If they did, then these official documents would have been attached to the letter and maybe Mālama Kohala Kahakai's comments would have been made in a timely manner. Instead, it appears that Mr. Cachola may again be suggesting that he has authority to act for others when in fact he does not.

VI. The suggestion that the property might be purchased by a governmental or private entity is not based on fact and is merely an effort to delay the permitting process, to deny Mr. Cohen and his family the use of their land, and to devalue the land while someone runs around and tries to put substantive and reality into these representations.

The language of the letter is telling: "has been nominated"; "has been approached"; "[w]e are in conversation with"; "Malama Kohala Kahakai has been working with" There is nothing concrete, nothing real in these statements.

This property was offered for sale or exchange to the State of Hawaii in September 1999 before Mr. Cohen purchased it. See September 10, 1999, letter attached hereto. I personally met with the then Chair of the BLNR to discuss whether the State was interested in purchasing or exchanging the property at a time when no CDUP application was pending. In addition, the DLNR (OCCL, Land Management, State Parks) and the County of Hawaii reviewed and commented on the EA and CDUP application without mentioning any interest in acquiring the property. I am not aware of any action taken by the State to pursue acquisition of the property.

Generally, a legitimate land trust will not participate in any way in opposing a landowner's development plans at the time the trust is considering acquisition of the property. Generally, legitimate land trusts rely on cooperation and good faith negotiation with landowners to accomplish their objectives.

No land trust, no "private donor" has ever approached Mr. Cohen about purchasing the Pao'o property. Mr. Cohen should not learn of this alleged goal of "working cooperatively with landowners to meet their financial needs" in a last minute plea to deny the application to build his home. This seems an unusual form of cooperation.

The offer to "work with Mr. Cohen" is not timely and not genuine. Mālama Kohala Kahakai is trying to ambush Mr. Cohen and ask the BLNR to deny his application and to prevent him from being legally entitled to build the proposed house. They are trying to devalue the property so that maybe sometime someone could buy it for less than it is worth. This is not an appropriate motivation for government or for a legitimate land trust.

No land trust, private donor, or community organization has ever called Mr. Cohen and asked about purchasing the land. The first he heard of the alleged desire to buy the land, to pay his expenses, or to cooperate with him is in the plea to deny the application—which was not even sent to him. Mr. Cohen's interest in building a home has been open, public knowledge for years. Certainly, Mr. Cachola knew about it in 2002. There have been many meetings and consultations, the EA and CDUP application have been public, and there was a duly noticed public hearing. There was ample opportunity to comment, to cooperate, and to make an honest offer.

VII. The issues relative to public access to areas of significant cultural and archaeological value are never easy to resolve. Most significant historical sites owned by the state or federal governments, i.e., Lapakahi, Pu'u Kohola, Koloko Honokohau, do not have unrestricted 24-hour public access. The sites

themselves can be damaged if people climb on them or cut trees and, like it or not, there are people who artifact hunt, cause malicious damage, or act carelessly with fire. The sites should be protected. The Cohen family is committed to protecting the sites.

The Cohen family has made contact with lineal descendants of the families who lived on the property. The Cohens have walked the property with Mr. Arthur Mahi and they have committed to consult with Mr. Mahi as the work progresses.

Mr. Cohen is not clear who the authors of this letter believe are "Mr. Cohen's cultural consultants." Mr. Cohen's archaeological consultant is Dr. Robert Rechtman. Mr. Cohen has met and talked with several others but does not have any cultural "consultants" as such. Nobody has received any payment, privileges, or promise except for the Cohen family's commitment to Arthur Mahi to act as if the Cohen family was part of the families which cared for this area for scores of years.

VIII. The Cohens have not "compromised" with anyone. The Cohens were treated with respect and consideration by the lineal descendants, by surfers and fishermen, and by representatives of governmental agencies.

The Cohens have tried, in every instance, to do the right things for the right reasons. So far, the people involved in this process have been reasonable, mutually respectful, and straightforward.

Mr. Cohen and members of the community walked the land and made decisions together. Mr. Cohen listened to the interests of the community and the community people who took the time to be involved listened to the concerns of Mr. Cohen and his family. Some real trust developed and each party tried to respect the others' interests. This is not "compromise" as such; this is good on-the-ground user-based planning. The authors of the letter were aware of Mr. Cohen's plans and, other than Mr. Cachola proposing a contract, did not engage in the process until now.

IX. The house will be minimally visible from the road. It will be low-rise, spread out, and landscaped and painted to blend into its surroundings. The agricultural building will be on Ag-zoned land.

The view issues are discussed in the CDUP application and EA. The adverse impacts will be minimal. The terrain is broken up, there are tall

keawe trees, and there are limited areas where the house will be visible from the road.

X. Mr. Cachola says he is native Hawaiian, born and raised in Kohala. His thoughts and opinions are certainly of value in the community. Mr. Cachola does not claim to be a lineal descendant of the native Hawaiian families associated with the Pao'o ahupua'a. Again, the letter is carefully worded. Mr. Cachola is a "lineal descendant of this area." The "area" is not defined or specified. Mr. Cohen believes the Mahi family are lineal descendants of residents of Pao'o. Mr. Cohen has been advised and believes that the native Hawaiian family members who are lineal descendants of the people of Pao'o deserve special consideration.

Again, we are not sure who the letter refers to as "the families that were consulted," or "the consultation and advice given."

XI. Interestingly, Mr. Cachola never mentioned a concern for the health of native Hawaiians allegedly inflicted by the Cohen home or that approval of the home would "accelerate cultural deterioration" when he proposed to manage the property on the Cohens' behalf.

Again, all cultural sites will be preserved, the ocean, coastline and about 90% of the site will be untouched. The home will be built in an already graded area. The space will remain in Conservation and will remain mostly open space.

The statements about "the minds and hearts of native Hawaiians" seem misplaced when coming from someone who set out to be a consultant for the owner. The question, "How many local people in the Kohala community can put together a high-powered team of lawyers and consultants to represent their interests?" also seems suspect when asked by someone who, as part of an organization with a highly professional, competent Board of Directors, affirmatively sought out the role of a consultant.

Mr. Cohen has gone through each step of the process with real consideration for the people of the area. He has tried to do it right. He will use his resources not only to build a home, but also to protect and preserve the area as if he was adopted by the families who lived here before. This has been a commitment to those people, made on the property and in person.

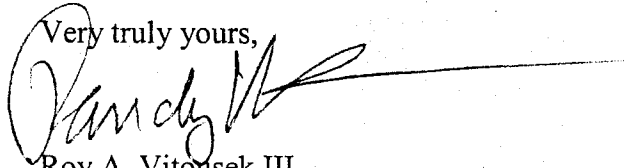
Kimberly Tiger Mills

April 5, 2006

Page 10

Thank you for the opportunity to respond to Mālama Kohala Kahakai's comments and objections. As always, please contact me if you have questions or require additional information.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Roy A. Vitousek III", with a long horizontal line extending to the right.

Roy A. Vitousek III

for

CADES SCHUTTE

A Limited Liability Law Partnership

RAV:bah

cc: Jonathan Cohen
Mooers Enterprises, LLC
Geometrician Associates, LLC

ImanageDB:643484.1

RECHTMAN CONSULTING, LLC

1101 Box 4149 Kea'au, Hawaii 96749-9710

phone: (808) 966-7630 fax: (808) 443-0065

e-mail: bob@rechtmanconsulting.com

ARCHAEOLOGICAL, CULTURAL, AND HISTORICAL STUDIES

Reply to Comments on Cultural Impact Assessment with the Proposed Development of a Single-Family Residence in Conservation District Lands (TMK: 3-5-7-01:5) [located in Pāo'o Ahupua'a] Prepared by Kēhaunani Abad, Ph.D. at the request of Fred Cachola and Gail Byrne, Directors of Malama Kohala Kahakai. Submitted to the State Board of Land and Natural Resources on March 31, 2006.

Prepared by Robert B. Rechtman, Ph.D., Rechtman Consulting, LLC
April 4, 2006

Kēhaunani Abad, Ph.D. was recruited by Malama Kohala Kahakai to review the Cultural Impact Assessment (CIA) that Rechtman Consulting, LLC prepared on behalf of Jonathan Cohen. Mr. Cohen and his family are proposing to construct a single-family residence in Conservation zoned land on TMK: 3-5-7-01:005. Malama Kohala Kahakai opposes Mr. Cohen's proposed use of his land, as well as any development along this portion of the Kohala shoreline.

In her review of the CIA, Kēhaunani Abad, Ph.D. lists five area of concern that constitutes "serious inadequacies." I will address each below.

1. Inappropriate site boundary identification. The boundaries of sites were previously determined in an archaeological study conducted by Archaeological Research Center Hawaii, Inc. (Hammatt and Folk 1980). As discussed in the CIA (pg. 1), they adopted a "splitter" approach when assigning site numbers to a more or less continuous set of archaeological features. Their site identifications were then codified by DLNR-SHPD as discrete regulatory units. The potential difficulties of segregating a cultural landscape into discrete units is discussed in the CIA (pg. 17), and it is recognized that limiting a property to a specifically defined area may actually partition it from what makes it significant. However, as the CIA points out, as offensive as the concept of boundaries may be, it is the regulatory benchmark for defining sites and assessing their significance. Contrary to Kēhaunani Abad's claim, the project area is not seen "as sitting adjacent to discrete sites that it only minimally disturbs." Rather, the current building envelope was carefully chosen so as to not directly impact any of the intact archaeological features, and the residence designed so as to not overpower the existing cultural landscape.

2. Lack of adequate consultation. There was a public meeting held in Kohala by Fred Cachola as a representative of 'Ike 'Āina. This meeting took place at a time when Mr. Cachola was in support of the current CDUA and thought his organization would enter into a partnership with the Cohen Family to manage the archaeological resources within the project area. Also, public notices were placed in several publications with both island-wide and statewide circulation with respect to the treatment of known burials within the project area. The families that come forward as a result of those publications were able to establish genealogical ties to Pāo'o Ahupua'a to the satisfaction of DLNR. It was these same families that we felt had the closest and most direct connection to the project area, thus we felt were the most culturally appropriate individuals with which to consult.

3. Inappropriate significance determinations of sites. As described in the CIA (pg. 17), Rechtman Consulting, LLC made the significance determinations using the regulatory criteria and standards promoted by DLNR-SHPD. Sites known to contain burials, sites interpreted as shrines, and the identified potential traditional cultural properties were evaluated as culturally significant as well as significant for possessing important research information about prehistory or history. Archaeological sites/features that individually are interpreted as having served a residential or occupational related function were assessed as significant for possessing important research information about prehistory or history. The families that were consulted did not make any determinations "on behalf of all native Hawaiians," their input was given on behalf of their families, who have genealogical ties to the project area. It was clear that to these families the entire project area is culturally significant. We believe that these local families are the appropriate consulted party, as opposed to, as Kēhaunani Abad seems to suggest, all native Hawaiians.

4. Lack of recognition of the importance of TCPs to a cultural community. Two potential TCPs were identified in the CIA based on the use of the area for resource exploitation and recreation. Specifically, access to and use of the shoreline and immediate offshore area for fishing and surfing, both could be considered traditional cultural practices. The importance of these activities to the community is recognized, that is way they were identified in the CIA. It was determined that the proposed construction the Cohen Family residence will not have a negative impact on either of these activities. It is possible that by improving coastal access the project will have a positive impact with respect to these activities.

5. Inappropriate criteria used to define TCPs. Nowhere does the CIA state that "continuity in the traditional use of a site for a 50 year period is required to distinguish a site as a TCP." The CIA provides the definition of TCP contained in the regulatory statutes. The two identified potential TCPs are associated with on-going practices that may have experienced a hiatus in the continuity of their use between earlier times to the present. However, obviously this did not preclude their consideration as potential TCPs. There was no evidence observed at any of the archaeological sites that indicated use associated with ongoing traditional cultural practices.

Letter of Understanding
by and between
Jonathan J. Cohen
and
'Ike 'Āina
regarding
Pao'o, Kohala, Hawai'i

Jonathan J. Cohen
Baker Bridge Road
Lincoln, MA 01773

'Ike 'Āina
P.O. Box 4192
Honolulu, HI 96812

This letter of understanding is entered into by and between Jonathan J. Cohen and 'Ike 'Āina, a Hawai'i non-profit corporation, with respect to the following:

- A. Mr. Cohen is the landowner of an 11-acre parcel of coastal land at Pao'o, Kohala, Hawai'i, immediately south of Lapakahi State Park in Mahukona (the "Pao'o parcel").
- B. The Pao'o parcel contains numerous ancient Hawaiian fishing village archaeological sites that are very meaningful and valuable from a Hawaiian cultural and historical perspective and which are relatively intact, including house sites, a canoe halau site, burial sites, and other important archaeological sites. The Pao'o parcel also fronts several traditional surfing and fishing areas on the Kohala Coast. The Pao'o parcel lies in Ka Moku o Kohala, the District of Kohala, the 'āina of Kamehameha, an area rich in Hawaiian culture and history, containing important sites, history, legends, and cultural traditions.
- C. Mr. Cohen desires (1) to protect the Pao'o parcel sites, and to restore certain areas to the extent feasible without damage to the physical or historical integrity of the sites; (2) to build a home on the Pao'o parcel in a manner which minimizes impact to the sites on the property and respects the cultural history embedded in Pao'o; (3) to facilitate traditional public access along the oceanfront at Pao'o for surfing and fishing, and (4) to encourage access to Pao'o by community members for cultural learning and practice purposes appropriate to Pao'o, while respecting the privacy of his home.
- D. 'Ike 'Āina is a Native Hawaiian land trust, a non-profit Hawai'i corporation, organized to carry out education, conduct research, sponsor activities, provide technical assistance, acquire land, and implement projects relating to the preservation, protection, and restoration of land, natural resources, cultural sites, landscapes, and communities in Hawai'i.
- E. Mr. Cohen and 'Ike 'Āina desire to explore opportunities to work together to protect and restore the Pao'o parcel sites and to provide cultural learning and practice opportunities appropriate to Pao'o. These activities may include:

1. Removal or containment of kiawe and other non-native plant species from the archaeological sites. Any removal or containment shall be done according to established methods to minimize any further damage to the sites. 'Ike 'Äina may commence initial removal and containment of kiawe and other non-native plants interfering with the sites at Pao'o in close coordination with Mr. Cohen or Robbie Hind, Mr. Cohen's Pao'o caretaker.
2. Drafting a management plan for restoration and care of the sites.
3. Implementing the management plan as agreed between Mr. Cohen and 'Ike 'Äina, including restoration of sites as indicated in the agreed plan.
4. Designing and carrying out educational activities as agreed from time to time between Mr. Cohen and 'Ike 'Äina, such as bringing school groups and community groups to Pao'o to learn about and to practice Hawaiian canoeing, fishing, navigation, archaeology, and religious and cultural practices.
5. All such activities will be coordinated in advance with Mr. Cohen, and will be carried out in a spirit of cooperation and respect for the privacy and security of Mr. Cohen's home and the cultural sensitivities of Pao'o, in furtherance of support and renewal of the cultural traditions of the greater Kohala history and community of which Pao'o is a part.
6. This letter of understanding is intended to be an initial expression of the intention to cooperate between Mr. Cohen and 'Ike 'Äina. This letter is not intended to create any legally binding rights or obligations for any party. This letter is intended to acknowledge the beginning of a positive relationship among people, community, and the special place of Pao'o.

This letter of understanding is entered into with a spirit of *pono* (righteousness) and *mälama 'äina* (caring for the land) as of the ____ day of _____, 2002.

Jonathan J. Cohen

'Ike 'Äina
a non-profit Hawai'i corporation

By _____

Its _____

CADES SCHUTTE FLEMING & WRIGHT

ATTORNEYS AT LAW

Kailua-Kona Office

75-170 Hualalai Road • Suite B-303
Kailua-Kona, Hawai'i 96740-1737

E-Mail cadescades@cadescades.com
Tel (808) 329-5811 • Fax (808) 326-1175

Carlito P. Caliboso
Daniel H. Devaney IV
Michael H. Shikuma
Lynn H. Higashi
Patrick W. Hanifin
Theodore D. C. Young
Mitchell C. Sockett
Dean T. Yamamoto
Kelly G. La Porte
Johnnel L. Nakamura
Marc E. Rousseau
Kimberly A. Jackson

Of Counsel:
J. Russell Cades
Harold S. Wright
James S. Campbell
William M. Swope

Alexander W. Woody
Christopher T. Harrison
Jodi Shin Yamamoto
Charles K. Djou
Chris S. Mashiba
Sarah J. Lee
Stephen J. Rafferty
Mark A. Funaki
Madeleine M. V. Young
Michael L. Chun
Kristin S. Shigemura
Duane J. Young

C. Frederick Schutte
(1921-1988)
William L. Fleming
(1918-1997)

Writer's Direct Dial Number
(808) 329-5811
Direct Fax
(808) 326-1175
rvitousek@cadescades.com

September 10, 1999

Mr. Tim Johns, Chairman
Board of Land and Natural Resources
State of Hawaii
P. O. Box 621
Honolulu, HI 96809

Re: John and Josephine Selak Trust
TMK (3) 5-7-1:5, Pao'o, North Kohala, Hawaii

Dear Mr. Johns:

This office represents Heidi Galke, Successor Trustee of the John and Josephine Selak Trust. Ms. Galke, as Trustee, is the owner of property located at Pao'o, North Kohala, Hawaii identified as TMK (3) 5-7-1:5. Ms. Galke took title to this property as part of the resolution of a lawsuit filed by Ms. Galke as Successor Trustee against Michael Rearden (also known as Roark McGonigle), former trustee of the Selak Trust. This office represented Ms. Galke in her lawsuit filed in Third Circuit Court to enforce the judgment she obtained against Mr. Rearden/McGonigle in California.

The California lawsuit alleged, among other things, that Mr. Rearden/McGonigle violated his fiduciary duty to the Selak Trust, had converted trust assets to his own personal use, and had used these funds to acquire the above-referenced property.

Mr. Rearden/McGonigle and/or one or more entities he was apparently associated with held title to this property and applied for a conservation district use permit (CDUP) to develop a single family home and an access and utility easement from Akoni Pule Highway. The Board of Land and Natural Resources granted CDUP No. HA-8/26/86-1948 (to J. & J. S. R. T., Inc.) and also approved a grant of perpetual nonexclusive access and utility easement. The CDUP was extended several times at the applicant's request but eventually lapsed without the single family residence being built. Consideration for the access easement was not paid and that request also lapsed.

There were allegations that Mr. Rearden/McGonigle initiated unauthorized work on the property and/or misrepresented certain facts relative to the property and/or ownership to the BLNR. There was also substantial opposition to the proposed development of the single family home by members of the North Kohala community who apparently filed requests with the BLNR

to rescind the CDUP. The facts and circumstances regarding this CDUP were extensively covered in the periodical "Environment Hawaii." As identified in "Environment Hawaii" one of the community groups opposed to the CDUP was Hui Lihikai whose president was Toni Withington.

It should be clear from this background that Ms. Galke, as trustee, did not seek this property out and did not acquire it with the intention of developing it or speculating on an increase in value. She did not even acquire it for investment purposes—she got title to the property after she filed a lawsuit against Mr. Rearden/McGonigle.

At the same time, as trustee, Ms. Galke has the duty to preserve and, indeed, maximize the value of the assets in the trust. Ms. Galke would like to sell the property and reinvest the proceeds in performing assets. Ms. Galke believes that the value of the property has been artificially depressed by the legal and regulatory problems of the previous owner and by the public opposition to development which focused on this site in part as a result of the previous owner's activities and perceived indifference to public interests. Ms. Galke has listed the property for sale with Maryl Realty and has been advised by Ed Rapoza of Maryl that potential buyers are "scared off" by the record of problems with respect to this property. Mr. Rapoza has advised Ms. Galke that the marketability of the property would be significantly enhanced if she obtained a CDUP to build a single family home, if she built a home, and sold a permitted, developed property. While I am not a real estate professional, I think Mr. Rapoza's assessment is accurate.

Based on Mr. Rapoza's advice and mine, Ms. Galke retained Maryl Construction to design a proposed single family home and retained our office to prepare a CDUP application. The preliminary design has been completed of a single family home of just under 5,000 sq. ft. which complies with the criteria for construction of single family residences in the conservation district. My office has drafted an application for CDUP. In preparing the file the application, I spoke with Toni Withington to advise her that my client intends to apply for a CDUP.

Ms. Withington asked whether Ms. Galke would consider selling the property to the State or entering a land exchange. I have extensively discussed this with Ms. Galke and her California attorney, Morton Greenberg. Ms. Galke's response, which I communicated to Toni Withington, was that she was more than willing to consider public acquisition by purchase or land exchange provided she received a fair market value for the property. Ms. Withington asked me to hold off on filing the application for CDUP until she had an opportunity to speak with you about the possibility of acquiring the property.

I have recently been provided with a copy of Ms. Withington's August 25, 1999 letter to you. I spoke with Ms. Withington on August 25, 1999. My client and I respect Ms. Withington and the members of Hui Lihikai. I am writing this letter asking you to consider a land exchange so we can explore this avenue before filing the application for CDUP.

Tim Johns
September 10, 1999
Page 3

My client is interested in exchanging into revenue-generating property, or a property which could be readily sold. The location of the exchange parcel is less important than value.

Please give me a call once you have had the opportunity to review this matter. My direct line phone number is 521-9345.

Very truly yours,

Roy A. Vitousek III
for
CADES SCHUTTE FLEMING & WRIGHT

RAV:bah
cc: Morton Greenberg, Esq.
Heidi Galke, Successor Trustee

RECHTMAN CONSULTING, LLC

HC 1 Box 4149 Kea'au, Hawai'i 96749-9710

phone: (808) 966-7636 fax: (808) 443-0065

e-mail: bob@rechtmanconsulting.com

ARCHAEOLOGICAL, CULTURAL, AND HISTORICAL STUDIES

Reply to Comments on Cultural Impact Assessment with the Proposed Development of a Single-Family Residence in Conservation District Lands (TMK: 3-5-7-01:5) [located in Pāo'o Ahupua'a] Prepared by Kēhaunani Abad, Ph.D. at the request of Fred Cachola and Gail Byrne, Directors of Malama Kohala Kahakai. Submitted to the State Board of Land and Natural Resources on March 31, 2006.

Prepared by Robert B. Rechtman, Ph.D., Rechtman Consulting, LLC
April 4, 2006

Kēhaunani Abad, Ph.D. was recruited by Malama Kohala Kahakai to review the Cultural Impact Assessment (CIA) that Rechtman Consulting, LLC prepared on behalf of Jonathan Cohen. Mr. Cohen and his family are proposing to construct a single-family residence in Conservation zoned land on TMK: 3-5-7-01:005. Malama Kohala Kahakai opposes Mr. Cohen's proposed use of his land, as well as any development along this portion of the Kohala shoreline.

In her review of the CIA, Kēhaunani Abad, Ph.D. lists five areas of concern that constitutes "serious inadequacies." I will address each below.

1. Inappropriate site boundary identification. The boundaries of sites were previously determined in an archaeological study conducted by Archaeological Research Center Hawaii, Inc. (Hammatt and Folk 1980). As discussed in the CIA (pg. 1), they adopted a "splitter" approach when assigning site numbers to a more or less continuous set of archaeological features. Their site identifications were then codified by DLNR-SHPD as discrete regulatory units. The potential difficulties of segregating a cultural landscape into discrete units is discussed in the CIA (pg. 17), and it is recognized that limiting a property to a specifically defined area may actually partition it from what makes it significant. However, as the CIA points out, as offensive as the concept of boundaries may be, it is the regulatory benchmark for defining sites and assessing their significance. Contrary to Kēhaunani Abad's claim, the project area is not seen "as sitting adjacent to discrete sites that it only minimally disturbs." Rather, the current building envelope was carefully chosen so as to not directly impact any of the intact archaeological features, and the residence designed so as to not overpower the existing cultural landscape.

2. Lack of adequate consultation. There was a public meeting held in Kohala by Fred Cachola as a representative of 'Ike 'Āina. This meeting took place at a time when Mr. Cachola was in support of the current CDUA and thought his organization would enter into a partnership with the Cohen Family to manage the archaeological resources within the project area. Also, public notices were placed in several publications with both island-wide and statewide circulation with respect to the treatment of known burials within the project area. The families that come forward as a result of those publications were able to establish genealogical ties to Pāo'o Ahupua'a to the satisfaction of DLNR. It was these same families that we felt had the closest and most direct connection to the project area, thus we felt were the most culturally appropriate individuals with which to consult.

3. Inappropriate significance determinations of sites. As described in the CIA (pg. 17), Rechtman Consulting, LLC made the significance determinations using the regulatory criteria and standards promoted by DLNR-SHPD. Sites known to contain burials, sites interpreted as shrines, and the identified potential traditional cultural properties were evaluated as culturally significant as well as significant for possessing important research information about prehistory or history. Archaeological sites/features that individually are interpreted as having served a residential or occupational related function were assessed as significant for possessing important research information about prehistory or history. The families that were consulted did not make any determinations "on behalf of all native Hawaiians," their input was given on behalf of their families, who have genealogical ties to the project area. It was clear that to these families the entire project area is culturally significant. We believe that these local families are the appropriate consulted party, as opposed to, as Kēhaunani Abad seems to suggest, all native Hawaiians.

4. Lack of recognition of the importance of TCPs to a cultural community. Two potential TCPs were identified in the CIA based on the use of the area for resource exploitation and recreation. Specifically, access to and use of the shoreline and immediate offshore area for fishing and surfing, both could be considered traditional cultural practices. The importance of these activities to the community is recognized, that is way they were identified in the CIA. It was determined that the proposed construction the Cohen Family residence will not have a negative impact on either of these activities. It is possible that by improving coastal access the project will have a positive impact with respect to these activities.

5. Inappropriate criteria used to define TCPs. Nowhere does the CIA state that "continuity in the traditional use of a site for a 50 year period is required to distinguish a site as a TCP." The CIA provides the definition of TCP contained in the regulatory statutes. The two identified potential TCPs are associated with on-going practices that may have experienced a hiatus in the continuity of their use between earlier times to the present. However, obviously this did not preclude their consideration as potential TCPs. There was no evidence observed at any of the archaeological sites that indicated use associated with ongoing traditional cultural practices.

From: Kimberly.Mills@hawaii.gov

Date: March 10, 2006 2:21:55 PM HST

To: gailbyrne@hawaii.rr.com, fredcachola@aol.com

Subject: Kohala Coast

Thank you for your e-mail regarding Preserving the Kohala coast. The Office of Conservation and Coastal Lands is currently processing a Conservation District Use Application for the Cohen Single Family Residence at Paoo, TMK:(3) 5-7-1:5. A Public Hearing took place on January 24, 2006 at Spencer Beach Park. The FONSI was published in the OEQC Bulletin on March 8, 2006 and this application will most likely be going to the Board of Land and Natural Resources on April 13, 2006. Although the comment period has ended, should you have comments or concerns please send written documentation to our office and the applicant's representative Mr. Greg Mooers by March 29. I shall be mailing out the application and Final Environmental Assessment to you at the North Kohala Community Resource Center address today.

Kimberly K. Tiger Mills, Planner

State of Hawaii

Department of Land & Natural Resources

Office of Conservation and Coastal Lands

P.O. Box 621

Honolulu, Hawaii 96809

(808) 587-0382

kimberly.mills@hawaii.gov

55214

06 APR 10 AIO 58

April 7, 2006

DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

Roy A. Vitousek III
Direct Line: (808) 329-5811
Direct Fax: (808) 326-1175
E-mail: rvitousek@ca des .com

Peter Young, Chair
Board of Land and Natural Resources
P. O. Box 621
Honolulu, Hawaii 96809

Re: Conservation District Use Application HA-3269
TMK: (3) 5-7-001:005
Applicant: Jonathan Cohen, Aloha Properties, LLC

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2006 APR 11 A 9:39
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Dear Mr. Young:

I have tried to evaluate the question of whether there are indeed "unresolved issues" relative to the Cohen family's conservation district use permit application.

1. My starting point is that the Board had previously granted a conservation district use permit (CDUP HA-1948) to build a single family home in the exact same location. Consequently, whatever issues there were must have been resolved before 1985 as the Board previously approved construction of a single family home in this location.

2. This application has been through the public regulatory processes for shoreline certification, environmental assessment pursuant to HRS chapter 343, archaeological inventory and mitigation pursuant to HRS chapter 6E, the Hawaii Island Burial Council process pursuant to HRS § 6E-43 and 43.5, the CDUA public comment process, the SMA assessment/exemption process with the County and a duly noticed public hearing in South Kohala on January 24, 2006. All regulatory processes were completed appropriately and smoothly, all necessary preliminary governmental approvals obtained, and all testimony at the public hearing, including the testimony of surfers, fishermen, and native Hawaiians with generational connections to the Pao'o area was favorable to the proposed single family home.

3. In addition to the required consultations, Applicant personally met on the property with native Hawaiians who were lineal descendants of the families who built the structures and left the remains of their ancestors at Pao'o, forged personal bonds with the lineal descendents, and committed to work directly with the lineal descendents to care for the cultural, historical, and natural resources on the property.

4. Applicant and their representatives met on the property with representatives of the DLNR's Na Ala Hele Division, with representatives of the federal Ala Kahakai demonstration trail program, with Jerry Rothstein of Public Access Shoreline Hawaii, with surfers, with

C S

EXHIBIT 15

Cades Schutte Building
1000 Bishop Street, Suite 1200
Honolulu, Hawaii 96813
Tel: 808.521-9200
Fax: 808.521-9210
www.cades.com

Kona Office
75-170 Hualalai Road, Suite 303
Kailua Kona, Hawaii 96740
Tel: 808.329-5811
Fax: 808.326-1175

representatives of the State Surveyor's office and coastal specialist, with other surfers, fishermen, hikers, and native Hawaiians to discuss the beach and ocean access, trail, protection of historical and cultural resources, and related concerns.

5. Public Access. Based on these consultations and communications set out above, the Cohen family directed its archaeological consultant and surveyor to identify a trail alignment along the coast, survey it, and propose a specific alignment to the DLNR for a coastal trail. Mr. Cohen is proposing, as part of the CDUP, to delineate a coastal trail and to grant a perpetual easement for public access along the identified trail alignment.

The Application proposes realigning a portion of the jeep trail to be consistent with the approved burial treatment plan. The Application does not propose extinguishing any pedestrian access over the current alignment of the jeep trail. Historically, DLNR has advocated pedestrian use of the jeep trail on private land in this area but not public vehicular use.

6. Cultural Impact Statement. The potential cultural impacts involved with development of a single family home on this site were evaluated by the BLNR when it approved CDUP HA-1948. Since that time and in conjunction with the new application, there has been an extremely thorough assessment of potential cultural impacts and concrete actions taken by Applicant to mitigate any adverse effects. To be specific, Applicant and their representatives have spent many hours on the property identifying the natural, cultural, and historical resources. A thorough archaeological inventory has been conducted and there has been considerable interaction between the project archaeologist and DLNR's State Historic Preservation Division with respect to the historical sites on the property. The decision was made to preserve all sites except for the remnant of one site which had been bulldozed by the previous owner. Data recovery was completed with respect to that site. Applicant went through the Hawaii Island Burial Council and obtained approval of a burial treatment plan for sites found on the adjoining State-owned property. This process itself includes publication and identification of lineal descendants and cultural descendants with respect to the property and a thorough assessment of the potential cultural impacts associated with the presence of human remains near the property. A mitigation plan, i.e., a burial treatment plan was approved by the Hawaii Island Burial Council.

The interests of surfers, fishermen, hikers, and the like were clearly identified as practices conducted on or in the ocean near the property. It was clearly articulated in the CDUA that members of the public, including native Hawaiians, surfed, fished, and dove along the coastline of Pao'o. Specific measures were identified to mitigate any adverse impact to these cultural and recreational uses including: a) using only a very limited portion of the site being used for the single family residence, b) the preservation in place of all archaeological sites and other natural features on the property, and c) the creation/preservation of the coastal trail. A real and practical assessment of potential impacts of the project on cultural, natural, and historical resources was performed, the results articulated in the CDUA, and appropriate mitigation measures were identified and put in place.

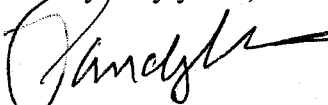
7. Adjacent State Lands. We understand that there may be an issue associated with impacts on adjacent State lands. Presumably, this would be the same issue that would have been involved at the time the previous CDUP was granted. It is also noteworthy that Applicants' predecessor in title offered the property for sale or exchange to the State of Hawaii in September 1999. The State did not respond to this offer. We remain unclear as to what these concerns may be.

8. Finally, it is extremely difficult for the Applicants to understand how "unresolved issues" could surface ten (10) days or so before the scheduled April 13, 2006, Board meeting and after Applicants had been through every aspect of application and pre-meeting processes including the public hearing in the district without the unresolved issues being resolved in a timely manner. If there are last minute submissions by members of the public or others, the untimeliness of these objections and the failure to participate in the process should be taken into consideration in evaluating the weight of the comments themselves.

In this instance, it appears that OCCL staff wrote an email to Ms. Byrne and Mr. Cachola on March 10, 2006, acknowledging that the comment period was closed but inviting comments by March 29, 2006. The Cachola letter, whenever it was received by DLNR, was sent to the Applicants on Friday, March 31, 2006. We understand that the staff report making recommendations (based at least in part on the Cachola letter) that there were unresolved issues was delivered to your office on April 3 or 4, 2006, before the Applicants could possibly address any issues. This hardly seems a fair way of dealing with an applicant who has made every effort comply with the regulatory requirements, meet with the community, and proceed with the application for a single family home in a thoughtful, respectful manner.

Thank you for your attention to this matter.

Very truly yours,



Roy A. Vitousek III

for

CADES SCHUTTE

A Limited Liability Law Partnership

RAV:bah

cc: Jonathan Cohen
Mooers Enterprises, LLC
Geometrician Associates, LLC

ImanageDB:643484.1

I spoke with Dan Lemo yesterday.
Greg Mooers met with Dan and Jigar this
morning. I will be writing another letter to you
shortly. Aloha. Randy

55242

'06 APR 12 A10:34

April 10, 2006

Peter Young, Chair
Board of Land and Natural Resources
P. O. Box 621
Honolulu, Hawaii 96809

DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

Roy A. Vitousek III
Direct Line: (808) 329-5811
Direct Fax: (808) 326-1175
E-mail: rvitousek@cade s.com

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2006 APR 12 P 1:16
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Re: Conservation District Use Application HA-3269
TMK: (3) 5-7-001:005
Applicant: Jonathan Cohen, Aloha Properties, LLC

Dear Mr. Young:

I have just been involved in one of the most incredible conversations in my professional life. Sam Lemmo called me at your request on Thursday, April 6, 2006, to discuss his division's position on the Cohen/Aloha Properties CDUA. I was so amazed at what he said that I asked Greg Mooers to go to Honolulu and meet personally with Mr. Lemmo and Tiger Mills on Friday, April 7, 2006. Mr. Lemmo told Greg Mooers many of the same things that he told me, so I guess he means them.

Mr. Lemmo told me that his division made a recommendation for denial because Tiger Mills "didn't like the proposed project." Mr. Lemmo said that Ms. Mills has been saying she "just did not like the proposed project" for months and told Mr. Mooers that she "didn't like the proposed project" during the site visit. This was the same site visit where Mr. Lemmo did not appear to want to step off the road and kept brushing the dust off of his dress slacks and street shoes.

Mr. Lemmo also told me that he would not give a favorable recommendation for a single family residence in the conservation district "unless everyone was in agreement."

These standards, of course, do not exist anywhere in the law. HRS chapter 183C and DLNR regulations establish Conservation District Use Permit application criteria and processes. Applicant met all procedural requirements and met all criteria for approval.

Please recall that this position of OCCL comes against the following background:

A. The Board had previously approved CDUP HA-1948 to develop a single family residence in the same location.

C S

EXHIBIT 16

Cades Schutte Building
1000 Bishop Street, Suite 1200
Honolulu, Hawaii 96813
Tel: 808.521-9200
Fax: 808.521-9210
www.cades.com

Kona Office
75-170 Hualalai Road, Suite 303
Kailua Kona, Hawaii 96740
Tel: 808.329-5811
Fax: 808.326-1175

B. The Board approved an access easement for the current applicant which was recorded on October 6, 2003.

C. The Department certified the shoreline on the property on December 16, 2004, and after Applicant's representatives walked the shoreline with representatives of the State Surveyor's Office, coastal specialists from OCCL, and Mr. Jerry Rothstein of PASH.

D. The Hawaii Island Burial Council approved a burial treatment plan after input from the lineal descendants of people buried near the property.

E. OCCL solicited and received comments from numerous public agencies during the comment period on the EA and CDUA. No substantial adverse comments were received. If SHPD did not respond with comments, that is an internal DLNR issue and the application should proceed as if no timely comments or objections were made.

F. A duly noticed public hearing was held on January 24, 2006. Several people appeared and testified in favor of the project; nobody testified against the proposed home.

G. Applicant was notified in writing on January 17, 2006, that the comment period was closed. See attached letter from Sam Lemmo to Greg Mooers.

H. The Department made a Finding of No Significant Impact (FONSI), which was published in The Environmental Reporter on March 8, 2006. The challenge period ended on April 7, 2006, without, to Applicant's knowledge, any challenge being filed.

I. On March 10, 2006, OCCL planner, Tiger Mills requested comments from Fred Cachola and Gail Byrne. See email of March 10, 2006. This email asked Mr. Cachola and Ms. Byrne to submit comments on or before March 29, 2006.

J. Comments from Malama Kohala Kahakai, by Mr. Cachola and Ms. Byrne, were provided to Ms. Mills some time before March 31, 2006. Ms. Mills emailed the comment letters to Applicant's representatives on March 31, 2006.

K. On or about April 3, 2006, Ms. Mills and Mr. Sam Lemmo submitted the OCCL recommendation to the Chair, which recommended denial because of alleged "unresolved issues" based on the comments received from Mr. Cachola and Ms. Byrne.

L. Mr. Fred Cachola, in 2002, made a proposal for 'Ike 'Aina, a native Hawaiian land trust of which Mr. Cachola was a director, to manage the Cohen property. Attached hereto is copy of a document entitled "The Pao'o Parcel . . . and 'Ike 'Aina" which was prepared, the Applicant believes, by Fred Cachola and was sent to Applicant in 2002.

There are no real unresolved issues or questions. Applicant has addressed all issue or concerns. There was a previous CDUP granted by the Board to build a home on this exact site.

It is clear that Ms. Mills and Mr. Lemmo "just did not like the proposal" but had nothing in the record of the Application and all the agency comments to justify a negative recommendation. They had to go out at (or after) the last minute and solicit comments, then base their actions on the completely unreliable, untimely information they received.

In the face-to-face meeting between Mr. Mooers and Mr. Lemmo and Ms. Mills, Mr. Lemmo repeatedly referred to the Applicant and Applicant's consultants as "rich developers," repeatedly said that the "rich developer thinks this is Kahala Beach . . ."

This is a completely inappropriate action by the Department. That Mr. Lemmo and Ms. Mills would admit to me and to Mr. Mooers that they acted because they "just didn't like the proposal" shows an increasingly alarming degree of arrogance which puts the Department and the State in an extremely bad light.

Interestingly, Mr. Lemmo has been putting on a review of Shoreline Policy workshops around the State. In the meeting in Kona on March 230, 2006, Mr. Lemmo started out by presenting a "World View." He ran Power Point slides which asked whether people were "liberal" or "conservative" and said "liberals" care about social issues and social problems while "conservatives" care only about conserving what they have. A copy of some of the Power Point slides are attached hereto.

These views are troublesome. First, they seem to be inappropriate political expressions for a public employee. Second, it is hard to see how they are related to shoreline policies. Third, it appears that Mr. Lemmo somehow believes his personal political/social views are relevant to his work as a DLNR division head. Fourth, this does not bode well for any applicant Mr. Lemmo calls a "rich developer."

The Applicant here is a completely sincere, concerned family. They went through every step of the process in good faith and with the interest of building a home which preserved and protected this site. I was there when Arthur Mahi, a 70+ year old native Hawaiian lineal descendant of the people of Pao'o met with Jonathan Cohen and his daughter Zoe at Pao'o and walked the land for three hours. I was there when Papa Mahi told Jonathan that if Jonathan's family was going to be at Pao'o and caring for the land, Jonathan's family had to become part of Papa Mahi's family. This is real. This is exactly what the relevant processes in the Burial Council, the cultural impact assessment, etc. are intended to encourage. This family did everything appropriately—not because they had to but because they wanted to do it right and feel good in their home.

I would have never guessed that after all this effort, all the time on the land with the people of the land, and with all the positive comments there would be a recommendation of denial because the OCCL staff planners "just didn't like the proposal."

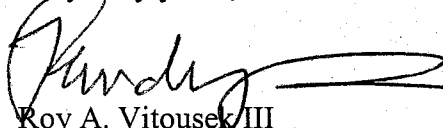
So, here is where we are:

1. It does not appear that OCCL will change its recommendation.
2. If the matter is going to the Board with a negative recommendation, Mr. Cohen will be requesting a contested case hearing to assure that he can get all relevant facts, including the facts set out above, on the record so he will be able to get judicial review.
3. If the Department is going to recommend denial, we might as well get into the contested case hearing process sooner rather than later.

It is extremely unfortunate that this has occurred, especially to the Cohen family. This is exactly the type of behavior/attitude that Applicant are getting at OCCL over the last few months which I tried to discuss with you on March 29, 2006. I guess we are getting into this sooner than I had hoped.

Thank you for your attention to this matter.

Very truly yours,



Roy A. Vitousek III

for

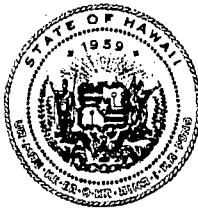
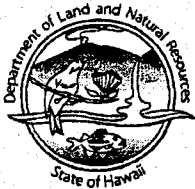
CADES SCHUTTE

A Limited Liability Law Partnership

RAV:bah

cc: Jonathan Cohen
Mooers Enterprises, LLC
Geometrician Associates, LLC

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIHIOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:TM

CDUA HA-3269

Acceptance Date: November 10, 2005
180-Day Exp. Date: May 09, 2006

Mr. Gregory R. Mooers, President
Mooers Enterprises, LLC
P.O. Box 1101
Kamuela, Hawaii 96743

JAN 17 2006

Dear Mr. Mooers,

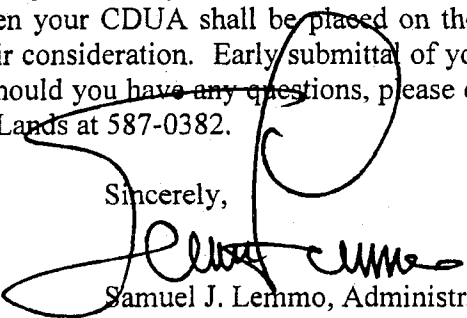
SUBJECT: Conservation District Use Application (CDUA) HA-3269 for the Cohen Single Family Residence (SFR) located at Pao'o, North Kohala island of Hawaii, TMK: (3) 5-7-001:005

This letter is regarding the processing of CDUA HA-3269. The public and agency comment period on your client's application has closed (January 7, 2006). Attached to this letter are copies of the comments received by the Office of Conservation and Coastal Lands (OCCL) regarding the CDUA. Please send copies of your responses to the questions raised in these letters directly to the authoring agency as well as to the OCCL.

The final copy of your Environmental Assessment (EA) needs to include your responses to the queries raised in these letters. These responses can be attached to the end of the Final EA document. Please send 6 (six) copies of the Final EA to the OCCL no later than February 17, 2006. Include a hard copy and a diskette of the submitted Office of Environmental Quality Control (OEQC) Publication Form for the Final EA, and if the project summary has changed, a new summary.

Should the OCCL determine a Finding of No Significant Impact (FONSI) for the final version of your Environmental Assessment then your CDUA shall be placed on the agenda of the Board of Land and Natural Resources for their consideration. Early submittal of your response to comments will expedite the review process. Should you have any questions, please contact Tiger Mills of our Office of Conservation and Coastal Lands at 587-0382.

Sincerely,


Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

From: Kimberly.Mills@hawaii.gov

Date: March 10, 2006 2:21:55 PM HST

To: gailbyrne@hawaii.rr.com, fredcachola@aol.com

Subject: Kohala Coast

Thank you for your e-mail regarding Preserving the Kohala coast. The Office of Conservation and Coastal Lands is currently processing a Conservation District Use Application for the Cohen Single Family Residence at Paoo, TMK:(3) 5-7-1:5. A Public Hearing took place on January 24, 2006 at Spencer Beach Park. The FONSI was published in the OEQC Bulletin on March 8, 2006 and this application will most likely be going to the Board of Land and Natural Resources on April 13, 2006.

Although the comment period has ended, should you have comments or concerns please send written documentation to our office and the applicant's representative Mr. Greg Mooers by March 29. I shall be mailing out the application and Final Environmental Assessment to you at the North Kohala Community Resource Center address today.

Kimberly K. Tiger Mills, Planner

State of Hawaii

Department of Land & Natural Resources

Office of Conservation and Coastal Lands

P.O. Box 621

Honolulu, Hawaii 96809

(808) 587-0382

kimberly.mills@hawaii.gov

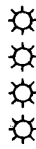
**The Pao'o Parcel - - - And Ike Aina
Fact Sheet
Information for Discussions With the Kohala Community and Schools**

The Pao'o Parcel

1. Location: Just south of Lapakahi, along the coast line of Kohala
TMK (3) 5-7-01:5 (The Pao'o Parcel)
2. Area size: 11 acres of Coastal land
3. Brief description: The Pao'o parcel lies in the Moku of Kohala. It contains Hawaiian cultural, fishing and coastal resource areas on the Kohala Coast.
4. Owner: Jonathan J. Cohen
5. Desires of owner:
 - a). to protect the Pao'o parcel sites
 - b). to build a home on the Pao'o parcel in a manner with minimizes impact to the sites on the property and respects the cultural history embedded in Pao'o
 - c). to preserve appropriate traditional public access along the oceanfront at Pao'o
 - d). to encourage reasonable and appropriate access to Pao'o by community members for cultural learning and practice purposes appropriate to Pao'o while respecting the privacy of his home
 - e.) to work with Ike Aina to explore opportunities to protect and restore Pao'o parcel sites and to provide cultural learning and practice opportunities appropriate to Pao'o.;

Ike Aina

1. Who is Ike Aina? Ike Aina is a Native Hawaiian land trust, a non-profit Hawai'i corporation . The lead liason between Ike Aina and the Kohala Schools and communities is Fred Cachola.
2. What is their purpose? Ike Aina is organized to carry out education, conduct research, sponsor activities, provide technical assistance, acquire land, and implement projects relating to preservation, and restoration of land, natural resources, cultural sites, landscapes and communities in Hawaii
3. See brochure for more details; such as who is on the board of directors, mission statement, etc.



*'Ike 'Aina's work is guided by
Hawaiian cultural values, philosophy,
and principles.*

WHAT MAKES 'IKE 'AINA DIFFERENT FROM OTHER LAND TRUSTS?

'Ike 'Aina posits a special relationship with the *'aina* (land) as a living being and as kin. Therefore a special responsibility exists for man to care for the *'aina* as a family member, with love and care and proper ceremony and protocol.

Akua (gods) and *aumakua* (family guardians) were part of the landscape, often taking physical form (*kinolau*) in plants, animals and other natural elements. From these cultural anchors flow contemporary ideas of *malama 'aina* (to care for and nurture the land as a family member) and *aloha 'aina* (to love the land as family). These ideas are deeply rooted. Hawaiian concepts emphasize unity of body, mind and spirit and the relationship of people with the land, sea, and spirit world. The elements, when in proper relationship, result in balance and harmony, and in the health of all things. *'Ike 'Aina* brings to the land trust concept the ideas of *kauleana* (responsibility) and *pono* (balance, harmony, right relationship).

HOW CAN I GET INVOLVED IN 'IKE 'AINA PROJECTS?

'Ike 'Aina supports the *ahupua'a* concept [from the mountain to the sea] for managing all resources, including land, water (both *wai* and *kai*—fresh and sea water), plants, animals, natural & cultural landscapes, and all things social, cultural and spiritual that contribute to the well-being of the *'aina*.

We encourage formation of *ahupua'a* councils, whenever possible, within each *moku* (district) on every island. *Ahupua'a* councils are instrumental in identifying sites and areas of significance where council members live. If you need help forming a council, or if your council needs help in protecting a resource or a practice, *'Ike 'Aina* can help to begin a process for stewardship, acquisition or partnership, as the community desires.

'Ike 'Aina, in partnership with community organizations, also hosts a series of site visits to places of significance. In addition to familiarizing themselves with these areas, participants are asked to contribute to the well being of each site by doing clean-up, brush clearing, planting or other work as designated by host communities.

Call or email for more information:

PO Box 4192, Honolulu, Hawai'i 96812

Phone 808.738.0084 © Fax 808.738-1094

TO PRESERVE LAND AND PERPETUATE NATIVE HAWAIIAN CULTURAL RESOURCES AND PRACTICES

'Ike 'Aina

NATIVE HAWAIIAN LAND TRUST



Kahana Valley *lo'i kalo* [wetland taro fields]

The Hawaiian does not desire to conquer his elder female sibling, the 'aina, but to take care of her, to cultivate her properly, and to make her beautiful with neat gardens and careful husbandry. [Kame'eleihewa 1992]

WHY A LAND TRUST?

In Hawai'i land is precious. With a total land area of about 6,500 square miles, the state of Hawai'i is home to some 1.2 million residents and hosts nearly 7 million visitors annually, mostly on O'ahu island. Highly populated areas like Waikiki remind us that urbanization will quickly overrun all of Hawai'i's open spaces if developers and development are allowed to proceed at the breakneck speed that has characterized development since the 1950s.

Ike 'Aina is one of many land trusts in Hawai'i. All of them are here to protect some part of the islands' natural, cultural or historical legacy. Land trusts provide a means for communities to protect the significant places that are still here. Open spaces can remain so. Cultural and historical sites can retain their authenticity and sacredness. Landowners and community caretakers can plan together for the future of lands set aside as open space or sacred place. The land trust can be a "safe haven" for those who care about wellness for the earth.

Land trusts can and do help. We can help to keep development in its place. You can help us by identifying the lands that need to be held in trust. Together we can make a difference and keep our lands well.



OUR MISSION

Ike 'Aina was founded in 2000 as a non-profit 501 C 3. Our mission is to preserve land and perpetuate Native Hawaiian cultural resources and practices. We believe that the practitioner is essential to providing proper care of the land in all its aspects. We further believe that the land, itself, calls to us, whether Hawaiian or not, to restore that which has been damaged and to protect that which has been restored. The practitioner is the key to caring for the resource. We are mandated to "grow" practitioners. The lands we acquire and/or *malama* (care for) are the training grounds. In the process of training, the practitioner learns to heal, and the land is healed, and the people benefit.

OUR BOARD OF DIRECTORS

Fred Cachola, Native Hawaiian Historic Preservation Committee, Office of Hawaiian Affairs, O'ahu

Suzanne Case, The Nature Conservancy

Eric Enos, Ka'ala Farm

Paulo Fujishiro, Native Hawaiian Historic Preservation Committee, Office of Hawaiian Affairs, Maui

Neil Hannahs, Kamehameha Schools

David Helela, Cultural Practitioner, Kaua'i

Bob Hera, Native Hawaiian Historic Preservation Committee, Office of Hawaiian Affairs, Lana'i

Calvin Hoe, Hakupu'u 'Ohana, Queen Lili'uokalani Children's Center, O'ahu

Tim Johns, Damon Estate

Mahealani Kamau'u, Native Hawaiian Legal Corporation

Lilikala Kame'eiehiwa, Director, Center for Hawaiian Studies, University of Hawai'i - Manoa

Shad Kane, O'ahu Council of Hawaiian Civic Clubs

Solomon Kaopuiki, Hui Malama Pono o Lana'i

Keiki Kekipi, Ho'oulu Lahui, Paula'a Cultural Education Center, Hawai'i Island

Thomas Lenchanko, Wahiawa Hawaiian Civic Club, O'ahu; 'Ike 'Aina President

Manu Meyer, Native Hawaiian Historic Preservation Committee, Office of Hawaiian Affairs, Hawai'i Island

Maria Orr, Archaeologist, O'ahu

David Scott, Historic Hawai'i Foundation

Raynard Soon, Dept. of Hawaiian Home Lands

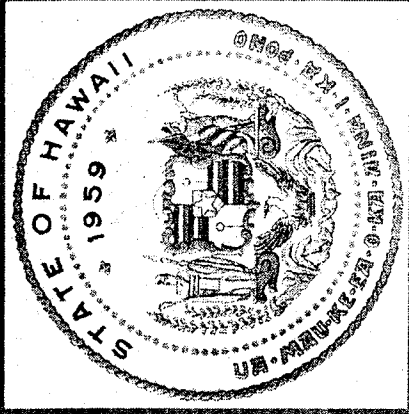
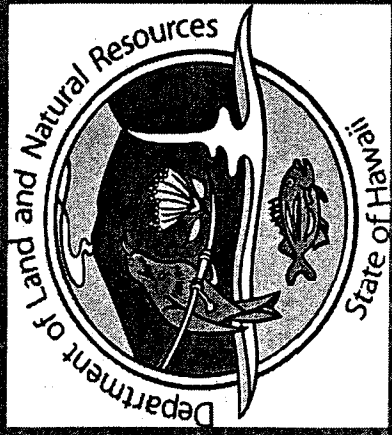
Hannah Springer, Cultural Practitioner, Hawai'i Island

Vicky Holt Takamine, 'Ilio 'ulaokalani Coalition, O'ahu

Chipper Wichman, Limahuli Garden, Kaua'i

Lynette Hi'ilani Cruz, Executive Director

State of Hawaii Department of Land and Natural Resources



Office of Conservation and Coastal Lands

Integrated Shoreline Policy Workshop



Office of Conservation and Coastal Lands
Department of Land and Natural Resources

(808) 587-0377

<http://www.hawaii.gov/dlnr/occl>

Integrated Shoreline Policy HRS §205A

Introduction

Foundation for Integrated Policy (Sam)

- Role of Science in Coastal Land Use Planning (Chip)

1. Enforcement

- Shoreline Structures (Dolan)
- Coastal Vegetation (Chris)

2. Implementation

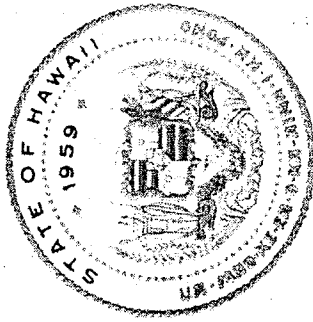
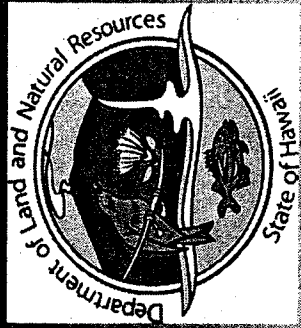
- DEA Reviews (Sam)
- Erosion Control Alternatives (Dolan)
- Compensatory Mitigation (Chris)

3. Planning

- Coastal Area Hazards and their Geographical Extents (Chip)
- Information & Guidance (Dolan)
- Shoreline Certification (Chris)

4. Policies

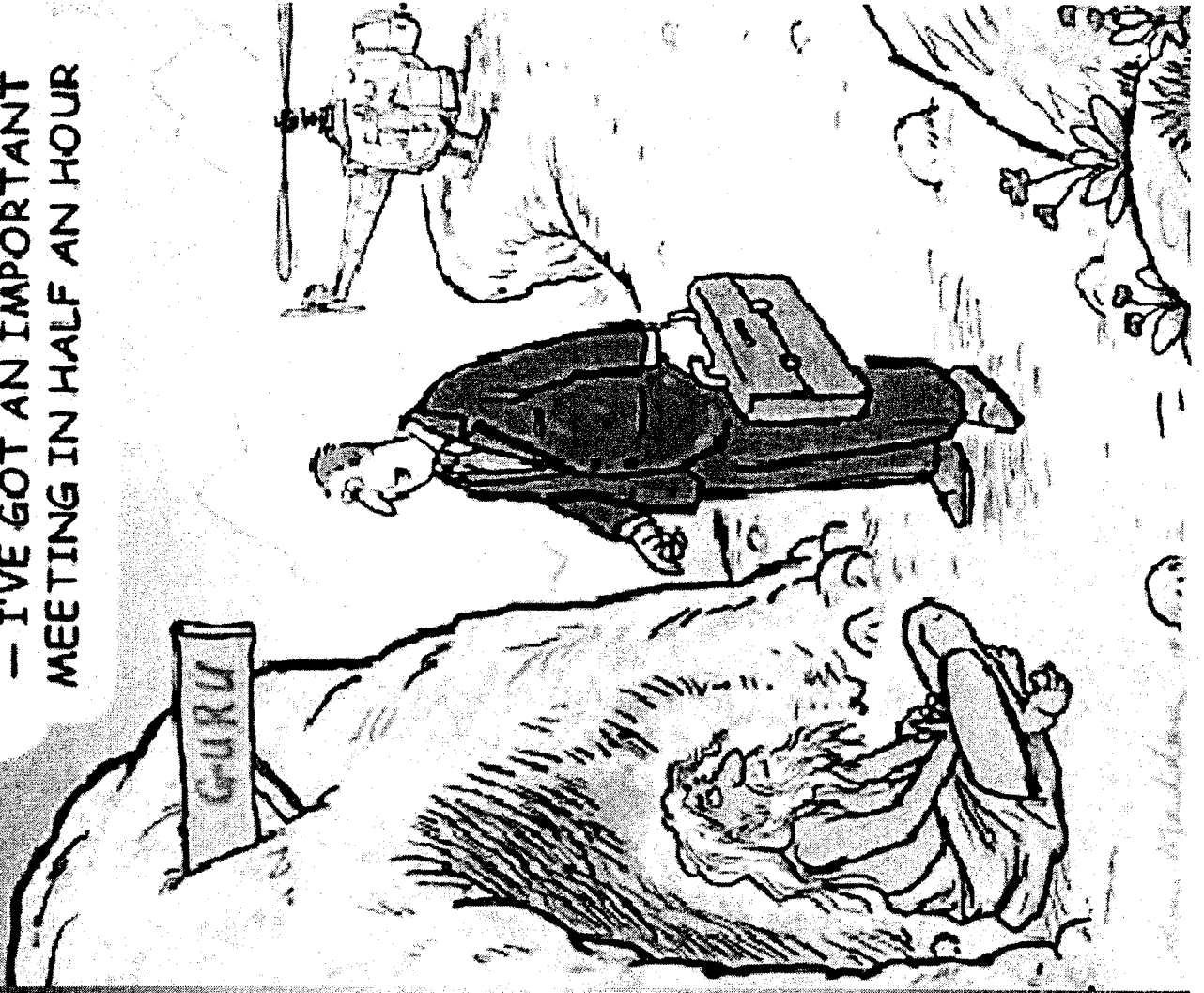
- Proposed Cooperative Policies (Chris)
- Integrated Shoreline Policy Model (Sam)



21st Century Human

Slow Down
Step Back
Listen & Learn

WHAT'S THE MEANING OF LIFE?
BUT MAKE IT QUICK
— I'VE GOT AN IMPORTANT
MEETING IN HALF AN HOUR



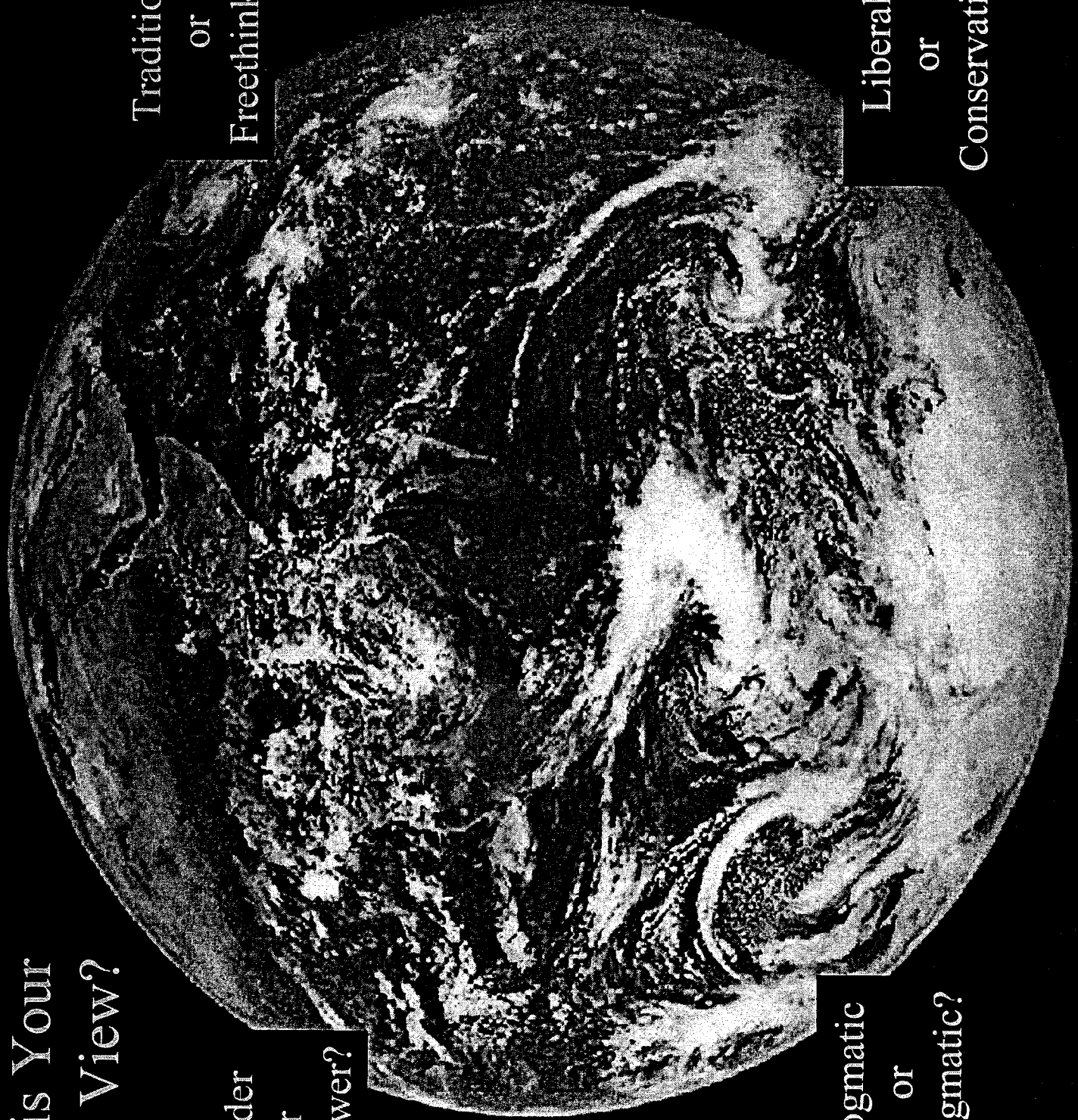
What is Your
World View?

Leader
or
Follower?

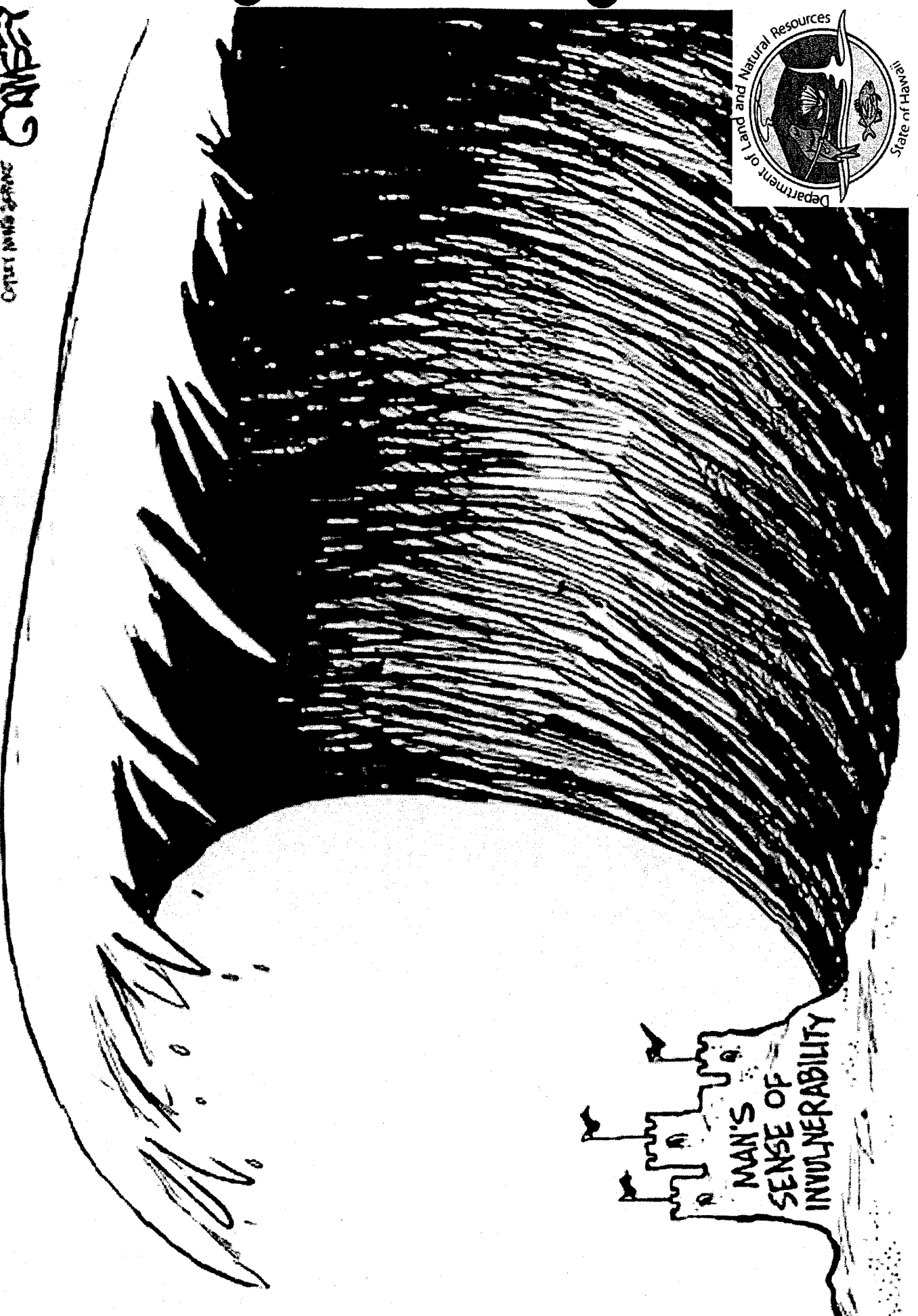
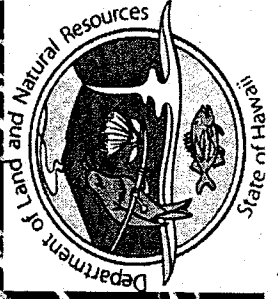
Traditional
or
Freethinking?

Dogmatic
or
Pragmatic?

Liberal
or
Conservative?



One Ocean: Judge
COSTA MINGOZ
MARELLA



MAN'S
SENSE OF
INVULNERABILITY

Roy A. Vitousek III
Direct Line: (808) 329-5811
Direct Fax: (808) 326-1175
E-mail: rvitousek@ca des.com

April 10, 2006

Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
P. O. Box 621
Honolulu, Hawaii 96809

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2006 APR 12 A 9:44
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Re: Conservation District Use Application HA-3269
TMK: (3) 5-7-001:005
Applicant: Jonathan Cohen, Aloha Properties, LLC

Dear Mr. Lemmo:

In reviewing our files in preparing for what we thought was the April 13, 2006, Board meeting relative to the above-referenced CDUA, we found the document attached hereto.

This is a document produced by 'Ike 'Aina at the time that group proposed an agreement with the Cohen family under which 'Ike 'Aina would manage the Pao'o property. As I stated in my April 5, 2006, letter, after walking the property with Mr. Cohen, Fred Cachola went to a community meeting in Kohala and represented that he was going to manage the Pao'o property. We believe the attached document may have been prepared for this community meeting. As you can see, this document confirms that "The lead liason [sic] between 'Ike 'Aina and the Kohala schools and communities is Fred Cachola."

Again, it seems questionable whether Mr. Cachola had disclosed the fact of his previous involvement with the Cohen family and the Pao'o project at the time he wrote to the Department requesting denial of the permit for a project that he had previously sought to support in the community.

CS

EXHIBIT 17

Cades Schutte Building
1000 Bishop Street, Suite 1200
Honolulu, Hawaii 96813
Tel: 808.521-9200
Fax: 808.521-9210
www.cades.com

Kona Office
75-170 Hualalai Road, Suite 303
Kailua Kona, Hawaii 96740
Tel: 808.329-5811
Fax: 808.326-1175

Samuel J. Lemmo
April 10, 2006
Page 2

Please call me if you have questions or wish to discuss this matter.

Very truly yours,



Roy A. Vitousek III

for

CADES SCHUTTE

A Limited Liability Law Partnership

RAV:bah

enclosure

cc: Jonathan Cohen
Mooers Enterprises, LLC
Geometrician Associates, LLC

ImanageDB:644767.1

**The Pao'o Parcel - - - And Ike Aina
Fact Sheet
Information for Discussions With the Kohala Community and Schools**

The Pao'o Parcel

1. Location: Just south of Lapakahi, along the coast line of Kohala
TMK (3) 5-7-01:5 (The Pao'o Parcel)
2. Area size: 11 acres of Coastal land
3. Brief description: The Pao'o parcel lies in the Moku of Kohala. It contains Hawaiian cultural, fishing and coastal resource areas on the Kohala Coast.
4. Owner: Jonathan J. Cohen
5. Desires of owner:
 - a). to protect the Pao'o parcel sites
 - b). to build a home on the Pao'o parcel in a manner with minimizes impact to the sites on the property and respects the cultural history embedded in Pao'o
 - c). to preserve appropriate traditional public access along the oceanfront at Pao'o
 - d). to encourage reasonable and appropriate access to Pao'o by community members for cultural learning and practice purposes appropriate to Pao'o while respecting the privacy of his home
 - e.) to work with Ike Aina to explore opportunities to protect and restore Pao'o parcel sites and to provide cultural learning and practice opportunities appropriate to Pao'o.;

Ike Aina

1. Who is Ike Aina? Ike Aina is a Native Hawaiian land trust, a non-profit Hawai'i corporation . The lead liason between Ike Aina and the Kohala Schools and communities is Fred Cachola.
2. What is their purpose? Ike Aina is organized to carry out education, conduct research, sponsor activities, provide technical assistance, acquire land, and implement projects relating to preservation, and restoration of land, natural resources, cultural sites, landscapes and communities in Hawaii
3. See brochure for more details; such as who is on the board of directors, mission statement, etc.



*'Ike 'Aina's work is guided by
Hawaiian cultural values, philosophy,
and principles.*

WHAT MAKES 'IKE 'AINA DIFFERENT FROM OTHER LAND TRUSTS?

'Ike 'Aina posits a special relationship with the *'aina* (land) as a living being and as kin. Therefore a special responsibility exists for man to care for the *'aina* as a family member, with love and care and proper ceremony and protocol.

Akua (gods) and *aumakua* (family guardians) were part of the landscape, often taking physical form (*kinohao*) in plants, animals and other natural elements. From these cultural anchors flow contemporary ideas of *malama 'aina* (to care for and nurture the land as a family member) and *aloha 'aina* (to love the land as family). These ideas are deeply rooted. Hawaiian concepts emphasize unity of body, mind and spirit and the relationship of people with the land, sea, and spirit world. The elements, when in proper relationship, result in balance and harmony, and in the health of all things. *'Ike 'Aina* brings to the land trust concept the ideas of *keulana* (responsibility) and *pono* (balance, harmony, right relationship).

HOW CAN I GET INVOLVED IN 'IKE 'AINA PROJECTS?

'Ike 'Aina supports the *ahupua'a* concept [from the mountain to the sea] for managing all resources, including land, water (both *wai* and *kai*—fresh and sea water), plants, animals, natural & cultural landscapes, and all things social, cultural and spiritual that contribute to the well-being of the *'aina*.

We encourage formation of *ahupua'a* councils, whenever possible, within each *moku* (district) on every island. *Ahupua'a* councils are instrumental in identifying sites and areas of significance where council members live. If you need help forming a council, or if your council needs help in protecting a resource or a practice, *'Ike 'Aina* can help to begin a process for stewardship, acquisition or partnership, as the community desires.

'Ike 'Aina, in partnership with community organizations, also hosts a series of site visits to places of significance. In addition to familiarizing themselves with these areas, participants are asked to contribute to the well being of each site by doing clean-up, brush clearing, planting or other work as designated by host communities.

Call or email for more information:

PO Box 4192, Honolulu, Hawai'i 96812

Phone 808.738.0084 © Fax 808.738-1094

TO PRESERVE LAND AND PERPETUATE NATIVE HAWAIIAN CULTURAL RESOURCES AND PRACTICES

'Ike 'Aina NATIVE HAWAIIAN LAND TRUST



Kahana Valley lo'i *kaalo* [wetland taro fields]

The Hawaiian does not desire to conquer his elder female sibling, the 'aina, but to take care of her, to cultivate her properly, and to make her beautiful with neat gardens and careful husbandry. [Kame'eleihewa 1992]

WHY A LAND TRUST?

In Hawai'i land is precious. With a total land area of about 6,500 square miles, the state of Hawai'i is home to some 1.2 million residents and hosts nearly 7 million visitors annually, mostly on O'ahu island. Highly populated areas like Waikiki remind us that urbanization will quickly overrun all of Hawai'i's open spaces if developers and development are allowed to proceed at the breakneck speed that has characterized development since the 1950s.

'Ike Aina is one of many land trusts in Hawai'i. All of them are here to protect some part of the islands' natural, cultural or historical legacy. Land trusts provide a means for communities to protect the significant places that are still here. Open spaces can remain so. Cultural and historical sites can retain their authenticity and sacredness. Landowners and community caretakers can plan together for the future of lands set aside as open space or sacred place. The land trust can be a "safe haven" for those who care about wellness for the earth.

Land trusts can and do help. We can help to keep development in its place. You can help us by identifying the lands that need to be held in trust. Together we can make a difference and keep our lands well.



OUR MISSION

'Ike Aina was founded in 2000 as a non-profit 501 C 3. Our mission is to preserve land and perpetuate Native Hawaiian cultural resources and practices. We believe that the practitioner is essential to providing proper care of the land in all its aspects. We further believe that the land, itself, calls to us, whether Hawaiian or not, to restore that which has been damaged and to protect that which has been restored. The practitioner is the key to caring for the resource. We are mandated to "grow" practitioners. The lands we acquire and/or *malama* (care for) are the training grounds. In the process of training, the practitioner learns to heal, and the land is healed, and the people benefit.

OUR BOARD OF DIRECTORS

Fred Cachola, Native Hawaiian Historic Preservation Committee, Office of Hawaiian Affairs, O'ahu

Suzanne Case, The Nature Conservancy

Eric Enos, Ka'ala Farm

Paulo Fujishiro, Native Hawaiian Historic Preservation Committee, Office of Hawaiian Affairs, Maui

Neil Hannahs, Kamehameha Schools

David Helela, Cultural Practitioner, Kaua'i

Bob Hera, Native Hawaiian Historic Preservation Committee, Office of Hawaiian Affairs, Lana'i

Calvin Hoc, Hakupu'u 'Ohana, Queen Lili'uokalani Children's Center, O'ahu

Tim Johns, Damon Estate

Mahealani Kamau'u, Native Hawaiian Legal Corporation

Lilikala Kame'eleihiwa, Director, Center for Hawaiian Studies, University of Hawai'i - Manoa

Shad Kane, O'ahu Council of Hawaiian Civic Clubs

Solomon Kaopuiki, Hui Malama Pono o Lana'i

Keiki Kekipi, Ho'oulu Lahui, Paula'a Cultural Education Center, Hawai'i Island

Thomas Lenchanko, Wahiawa Hawaiian Civic Club, O'ahu; 'Ike Aina President

Manu Meyer, Native Hawaiian Historic Preservation Committee, Office of Hawaiian Affairs, Hawai'i Island

Maria Orr, Archaeologist, O'ahu

David Scott, Historic Hawai'i Foundation

Raynard Soon, Dept. of Hawaiian Home Lands

Hannah Springer, Cultural Practitioner, Hawai'i Island

Vicky Holt Takamine, 'Ilio'ulaokalani Coalition, O'ahu

Chipper Wichman, Limahuli Garden, Kaua'i

Lynette Hi'ilani Cruz, Executive Director

April 10, 2006

Roy A. Vitousek III
Direct Line: (808) 329-5811
Direct Fax: (808) 326-1175
E-mail: rvitousek@ca des .com

Kimberly Tiger Mills
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
P. O. Box 621
Honolulu, Hawaii 96809

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2006 APR 12 A 9:44
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Re: Conservation District Use Application HA-3269
TMK: (3) 5-7-001:005
Applicant: Jonathan Cohen, Aloha Properties, LLC

Dear Ms. Mills:

This will confirm our April 10, 2006, conversation in which you advised me that the Cohen CDUA is not on the Board's Agenda for the April 13, 2006, meeting.

In this conversation, you asked me whether Applicant intended to respond to the comments which the Department received from Malama Kohala Kahakai (Fred Cachola and Gail Byrne). I replied that I thought the letter was addressed to the Board of Land and Natural Resources and was a request to deny the CDUA.

You said that under Chapter 343 the applicant is required to respond to comments received during the 30-day comment period. I said I was aware of that but I understood that: 1) the letter was not a comment on the EA; 2) the comment period was completed in January 2006 and we received a letter from Mr. Lemmo confirming that the comment period was closed (a copy of the January 17, 2006, letter is attached); and 3) your March 10, 2006, email to Mr. Cachola and Ms. Byrne, in which you solicited comments expressly said that "the comment period ended" (copy of your email of 3/10/06 is attached).

It seemed from our brief conversation that you were possibly confused between the 30-day comment period following the publication of the Draft EA and the 30-day challenge period following the publication of the Final EA and the Department's Finding of No Significant Impact. The Draft EA was published on December 8, 2005 (see attached excerpt from the 12/8/05 The Environmental Reporter) and the comment period elapsed on January 7, 2006 (see also, Lemmo letter of January 17, 2006). The Final EA and FONSI were published on March 8, 2006 (see attached excerpt from the 3/8/06 The

C S

EXHIBIT 18

Cades Schutte Building
1000 Bishop Street, Suite 1200
Honolulu, Hawaii 96813
Tel: 808.521-9200
Fax: 808.521-9210
www.cades.com

Kona Office
75-170 Hualalai Road, Suite 303
Kailua Kona, Hawaii 96740
Tel: 808.329-5811
Fax: 808.326-1175

Kimberly Tiger Mills
April 10, 2006
Page 2

Environmental Reporter) and the challenge period ended on April 7, 2006. We are not aware of any challenge to the EA.

Please call me if you have questions or wish to discuss this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Randy", followed by a long horizontal line extending to the right.

Roy A. Vitousek III

for

CADES SCHUTTE

A Limited Liability Law Partnership

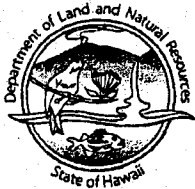
RAV:bah

enclosure

cc: Jonathan Cohen
Mooers Enterprises, LLC
Geometrician Associates, LLC

ImanageDB:644722.1

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIKOOLOA: ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:TM

CDUA HA-3269

Acceptance Date: November 10, 2005
180-Day Exp. Date: May 09, 2006

Mr. Gregory R. Mooers, President
Mooers Enterprises, LLC
P.O. Box 1101
Kamuela, Hawaii 96743

JAN 17 2006

Dear Mr. Mooers,

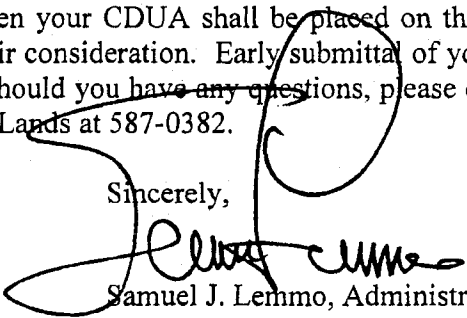
SUBJECT: Conservation District Use Application (CDUA) HA-3269 for the Cohen Single Family Residence (SFR) located at Pao'o, North Kohala island of Hawaii, TMK: (3) 5-7-001:005

This letter is regarding the processing of CDUA HA-3269. The public and agency comment period on your client's application has closed (January 7, 2006). Attached to this letter are copies of the comments received by the Office of Conservation and Coastal Lands (OCCL) regarding the CDUA. Please send copies of your responses to the questions raised in these letters directly to the authoring agency as well as to the OCCL.

The final copy of your Environmental Assessment (EA) needs to include your responses to the queries raised in these letters. These responses can be attached to the end of the Final EA document. Please send 6 (six) copies of the Final EA to the OCCL no later than February 17, 2006. Include a hard copy and a diskette of the submitted Office of Environmental Quality Control (OEQC) Publication Form for the Final EA, and if the project summary has changed, a new summary.

Should the OCCL determine a Finding of No Significant Impact (FONSI) for the final version of your Environmental Assessment then your CDUA shall be placed on the agenda of the Board of Land and Natural Resources for their consideration. Early submittal of your response to comments will expedite the review process. Should you have any questions, please contact Tiger Mills of our Office of Conservation and Coastal Lands at 587-0382.

Sincerely,


Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

From: Kimberly.Mills@hawaii.gov

Date: March 10, 2006 2:21:55 PM HST

To: gailbyrne@hawaii.rr.com, fredcachola@aol.com

Subject: Kohala Coast

Thank you for your e-mail regarding Preserving the Kohala coast. The Office of Conservation and Coastal Lands is currently processing a Conservation District Use Application for the Cohen Single Family Residence at Paoo, TMK:(3) 5-7-1:5. A Public Hearing took place on January 24, 2006 at Spencer Beach Park. The FONSI was published in the OEQC Bulletin on March 8, 2006 and this application will most likely be going to the Board of Land and Natural Resources on April 13, 2006.

Although the comment period has ended, should you have comments or concerns please send written documentation to our office and the applicant's representative Mr. Greg Mooers by March 29. I shall be mailing out the application and Final Environmental Assessment to you at the North Kohala Community Resource Center address today.

Kimberly K. Tiger Mills, Planner

State of Hawaii

Department of Land & Natural Resources

Office of Conservation and Coastal Lands

P.O. Box 621

Honolulu, Hawaii 96809

(808) 587-0382

kimberly.mills@hawaii.gov

The Environmental Notice

A SEMI-MONTHLY BULLETIN (UNDER SECTION 343-3, HRS) OF THE OFFICE OF ENVIRONMENTAL QUALITY CONTROL

DECEMBER 8, 2005

'Ewa-UH Transit Corridor Scoping Meetings

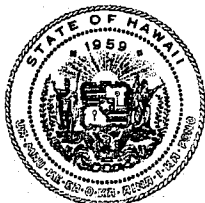
The City Dept. of Transportation Services is holding two scoping meetings at the following times and places.

December 13, 2005, 5-8 p.m.
Neal Blaisdell Center Pikake Room
777 Ward Ave., Honolulu

December 14, 2005, 7-9 p.m.
Kapolei Middle School Cafeteria
91-5335 Kapolei Parkway, Kapolei

For further information contact Faith Miyamoto at 527-6976. Project information is currently online at:

http://www.honolulutransit.org/project_overview/



LINDA LINGLE
GOVERNOR

OFFICE OF
ENVIRONMENTAL QUALITY CONTROL (OEQC),
DEPARTMENT OF HEALTH
GENEVIEVE SALMONSON
DIRECTOR, OEQC

*The Environmental Notice -
review the environmental impacts of
projects proposed in Hawai'i!*

Other Resources available . . .

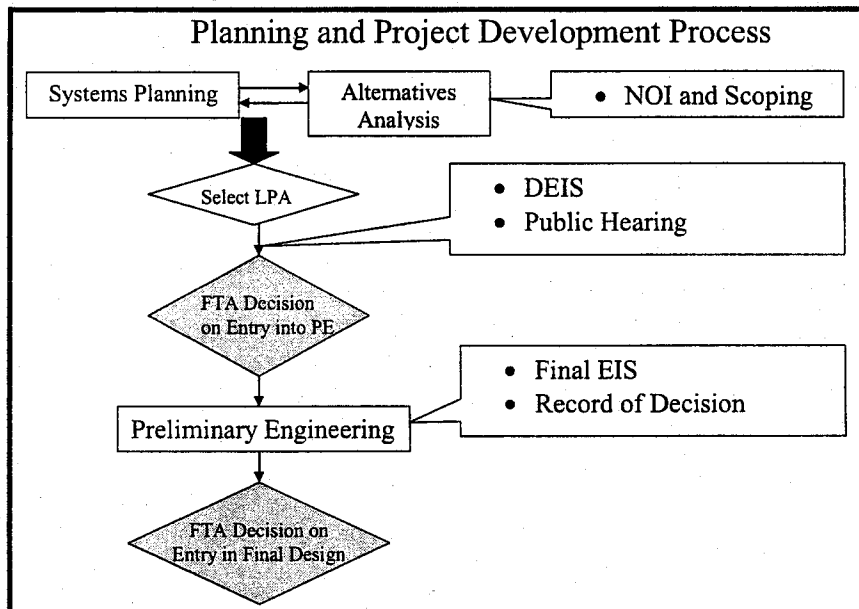
- June 2004 Guidebook for Hawai'i's Environmental Process (now, Online!)
- Environmental Assessments in Adobe Acrobat PDF Format (1990-2004) and Study Resource Library
- Environmental Council Annual Reports (now, Online!)

OEQC

235 SOUTH BERETANIA STREET
LEIOPAPA A KAMEHAMEHA
SUITE 702

HONOLULU, HAWAII 96813
Telephone (808) 586-4185
Facsimile (808) 586-4186
email address: oeqc@doh.hawaii.gov

Moloka'i/Lana'i: 1-800-468-4644 ext. 64185
Kaua'i: 274-3141 ext. 64185
Maui: 984-2400 ext. 64185
Hawaii: 974-4000 ext. 64185



Since the proposed action would use State or County of Honolulu funds and property, it must undergo environmental review in accordance with Hawaii Revised Statutes (HRS) Chapter 343 (the State EIS Law). Federal funds are also likely to be used, so the proposed action must comply with the National Environmental Policy Act (NEPA) as well.

The public is therefore invited to comment on the purpose and need to be addressed by the project, the alternatives, the modes and technologies to be evaluated, the alignments and termination points to be considered, and the environmental, social, and economic impacts to be analyzed. Written comments on the project alternatives, scope of the EIS, and purpose and need to be addressed by the project, should be forwarded to: Department of Transportation Services, City and County of Honolulu, 650 South King Street, 3rd Floor, Honolulu, HI, 96813, Attention: Honolulu High-Capacity Transit Corridor Project or by the internet at www.honolulutransit.org. For more information see page 6.

DECEMBER 8, 2005

Cohen Single-Family Dwelling, North Kohala (HRS 343 DEA)

District: North Kohala
TMK: (3) 5-7-01:05
Applicant: Jonathan Cohen
c/o Greg Mooers
P.O. Box 1101, Kamuela, HI 96743
Contact: Greg Mooers (880-1455)

Approving Agency: Department of Land & Natural Resources
P.O. Box 621, Honolulu, HI 96809
Contact: Sam Lemmo (587-0414)

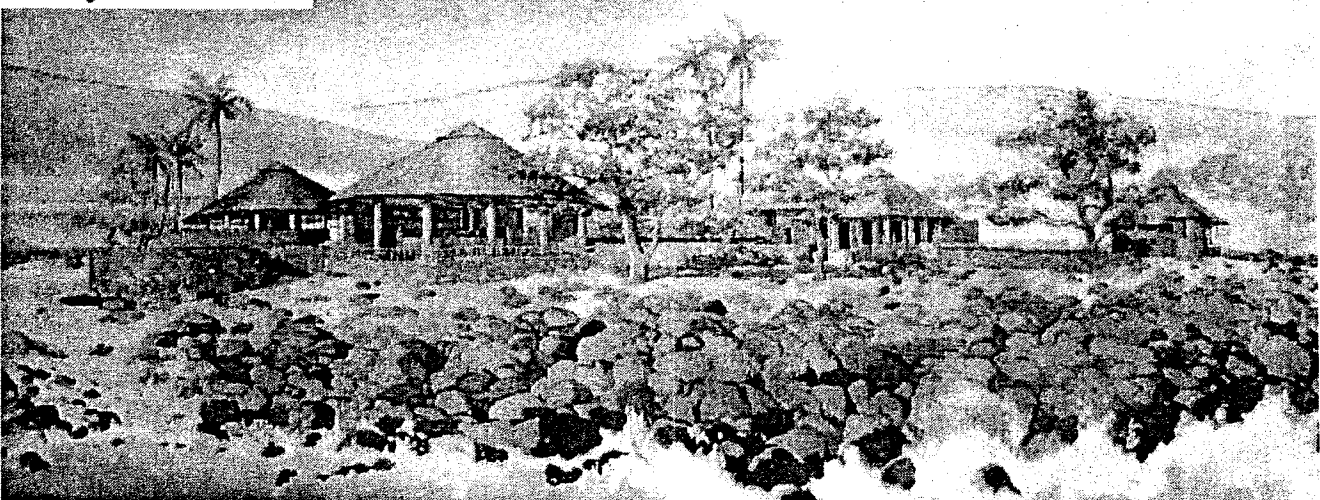
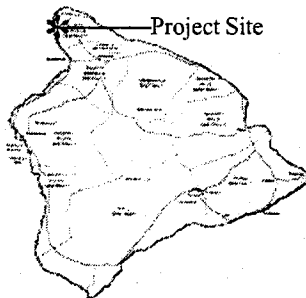
Consultant: Ron Terry, Ph.D.
HC 2, Box 9575, Keaau, HI 96749
Contact: Ron Terry (982-5831)

Public Comment Deadline: January 9, 2006

Status: Draft environmental assessment (DEA) notice pending 30-day public comment. Address comments to the applicant with copies to the approving agency, consultant and OEQC.

Permits Required: CDUP, Plan Approval, Special Management Area Permit or Exemption, Building Permits

Jonathan Cohen proposes to build a single-family residence and related improvements on a 10.61-acre property in North Kohala that lies mainly within the Conservation District. The project would also improve the access road on Cohen's easement across State property, and would re-route a portion of a lateral jeep road onto State property, both of which actions would occur in the Agricultural district. The proposed residence would consist of a densely landscaped compound of detached structures, in a design that minimizes visual impact and maximizes natural light ventilation, along with a pool, decks, an Individual Wastewater System, utilities, a paved access road, and landscape features such as vegetation, trails, and rock walls. All structures would be set a minimum of 50 feet inland from the certified shoreline. The design involves leaving about 90 percent of the site basically as-is and minimal disturbance of any natural or man-made features on the property. The construction will affect only one archaeological site, which has already been extensively disturbed and has been subject to data recovery per an approved plan. Additional sites will be protected through measures specified in preservation plans. The area currently provides shoreline access for hikers and fishermen via a jeep road that traverses the southern section of the property, and such access would be maintained through the rerouted jeep road. A number of proposed mitigation measures will protect sound levels, air quality, scenery, and water quality.



The Environmental Notice

A SEMI-MONTHLY BULLETIN (UNDER SECTION 343-3, HRS) OF THE OFFICE OF ENVIRONMENTAL QUALITY CONTROL

MARCH 8, 2006



LINDA LINGLE

GOVERNOR

OFFICE OF
ENVIRONMENTAL QUALITY CONTROL (OEQC),
DEPARTMENT OF HEALTH
GENEVIEVE SALMONSON
DIRECTOR, OEQC

*The Environmental Notice -
review the environmental impacts of
projects proposed in Hawai'i!*

Other Resources available . . .

- June 2004 Guidebook for Hawai'i's Environmental Process (now, Online!)
- Environmental Assessments in Adobe Acrobat PDF Format (1990-2003) and Study Resource Library
- Environmental Council Annual Reports (now, Online!)

OEQC

235 SOUTH BERETANIA STREET
LEIOPAPA A KAMEHAMEHA
SUITE 702

HONOLULU, HAWAII 96813

Telephone (808) 586-4185

Facsimile (808) 586-4186

email address: oeqc@doh.hawaii.gov

Moloka'i/Lana'i: 1-800-468-4644 ext. 64185
Kaua'i: 274-3141 ext. 64185
Maui: 984-2400 ext. 64185
Hawai'i: 974-4000 ext. 64185

Ewa Offshore Artificial Reef

The State of Hawai'i Department of Land and Natural Resources, Division of Aquatic Resources (DAR) is proposing to establish an artificial reef site on the seafloor offshore from the 'Ewa District of the Island of O'ahu that is properly placed and of sufficient size to accommodate substantial development of artificial-reef structures. For this purpose, DAR has delineated a 75-acre parcel located between depths of 50-112 feet that is mostly devoid of coral and valuable marine habitat. DAR is applying for a Conservation District Use Permit (CDUP) to formally designate the site to be used for the construction of artificial reefs.

The EISPN for this project covers construction of the first increment of arti-

ficial reef within the site boundaries. At least two separate piles (sets) of concrete Z-blocks will be emplaced on the ocean floor approximately 50-100 feet apart. A total of approximately 700-800 blocks will be used for the first increment, covering a seafloor area of about 8,000 square feet. This will provide between 1.3 and 1.5 acres of surface area for marine community habitat.

Completion of this project is entirely consistent with the DAR mission within the State Department of Land and Natural Resources. The Department believes it will provide direct benefits for O'ahu's fishing and marine recreational industries as well as substantial enhancements to the offshore marine environment. See page 10.

Waipahu Affordable Apartments

Plantation Town Apartments, LLC proposes to develop a multi-family affordable residential housing project on State land situated in the town of Waipahu. The development would be part of the Kau'olu Project, a 22.5-acre mixed-use development of the State of Hawaii. The project site is identified as tax map key 9-4-017:058.

Two 12-story rectangular shaped buildings (197' L X 57' W) will be sited on the western half of the site parallel with the property line. One hundred sixty five (165) residential units are planned for each structure.

The estimated development budget for the project is \$61.8 million and will be funded by Plantation Town Apartments LLC and participating banks. See page 7.

Kamokila Road Extension

The City and County of Honolulu, in cooperation with the estate of James Campbell is planning an extension of Kamokila Boulevard in Kapolei. 700 linear feet of the extension will be undertaken by the Campbell Estate from the terminus near Kapolei Parkway to provide access to a future State Judiciary Complex. The road will terminate at the southern end of the Judiciary site, mauka of the Oahu Railway and Land Company railroad tracks. The City will construct the remaining portion from aforementioned terminus to Franklin D. Roosevelt Avenue, providing road connectivity in the Kapolei region. See page 5.

Hawai'i Notices

MARCH 8, 2006

Cohen Single-Family Dwelling, South Kohala (HRS 343 FEA-FONSI)

District: South Kohala
TMK: (3)5-7-01:05
Applicant: Jonathan Cohen. c/o Greg Mooers
P.O. Box 1101, Kamuela, HI 96743
Contact: Greg Mooers (880-1455)

Approving Agency: State Dept. of Land & Natural Resources
P.O. Box 621, Honolulu, HI 96809
Contact: Samuel Lemmo (587-0414)

Consultant: Geometrician Associates
HC 2, Box 9575, Keaau, HI 96749
Contact: Ron Terry (982-5831)

Status: Final environmental assessment (FEA) and Finding of No Significant Impact (FONSI).

Permits Required: CDUP, Plan Approval, Special Management Area Permit or Exemption, Building Permits

Jonathan Cohen proposes to build a single-family residence and related improvements on a 10.61-acre property in North Kohala that lies mainly within the Conservation District. The project would also improve the access road on Cohen's easement across State property, and would re-route a portion of a lateral jeep road onto State property, both of which actions would occur in the Agricultural district. The proposed residence would consist of a densely landscaped compound of detached structures, in a design that minimizes visual impact and maximizes natural light ventilation, along with a pool, decks, an Individual Wastewater System, utilities, a paved access road, and landscape features such as vegetation, trails, and rock walls. All structures would be set a minimum of 50 feet inland from the certified shoreline. The design involves leaving about 90 percent of the site basically as-is and minimal disturbance of any natural or man-made features on the property. The construction will affect only one archaeological site, which has already been extensively disturbed and has been subject to data recovery per an approved plan. Additional sites will be protected through measures specified in preservation plans. The area currently provides shoreline access for hikers and fishermen via a jeep road that traverses the southern section of the property, and such access would be maintained through the rerouted jeep road. A number of proposed mitigation measures will protect sound levels, air quality, scenery, and water quality

Hawaii

Project Site



cades - schutte

a limited liability law partnership

RECEIVED
LAND DIVISION

2006 APR 11 P 1:33

LAND &
NATURAL RESOURCES
STATE OF HAWAII

Facsimile Cover Sheet

DATE : April 11, 2006

TO : Name

Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

Fax No.

808-587-0455

Phone No.

808-587-0382

FROM : Name:

Roy A. Vitousek III

Fax Number:

(808) 326-1175

Phone Number:

(808) 329-5811

E-mail Address:

rvitousek@cales.com

RE : Subject:

Conservation District Use Application HA-3269;
Applicant: Jonathan Cohen; TMK: (3) 5-7-001: 005

File No.:

Pages:

6

Transmitting:

4/10/06 letter and enclosure from Roy A. Vitousek III to
Samuel J. Lemmo

Remarks:

If all pages are not received, please call Barbara A. Huit at 808-329-5811.

THIS MESSAGE IS INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via the U.S. Postal service. Thank you.

ImanageDB:643997.1

CS

EXHIBIT 19

Cades Schutte Building
1000 Bishop Street, Suite 1200
Honolulu, Hawaii 96813
Tel: 808.521-9200
Fax: 808.521-9210
www.cades.com

Kona Office
75-170 Hualalai Road, Suite B-303
Kailua Kona, Hawaii 96740
Tel: 808.329-5811
Fax: 808.326-1175

The logo for Cades Schutte, featuring the company name in a lowercase, sans-serif font.**Roy A. Vitousek III**

Direct Line: (808) 329-5811

Direct Fax: (808) 326-1175

E-mail: rvitousek@cades.com

April 10, 2006

Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
P. O. Box 621
Honolulu, Hawaii 96809

Re: Conservation District Use Application HA-3269
TMK: (3) 5-7-001:005
Applicant: Jonathan Cohen, Aloha Properties, LLC

Dear Mr. Lemmo:

In reviewing our files in preparing for what we thought was the April 13, 2006, Board meeting relative to the above-referenced CDUA, we found the document attached hereto.

This is a document produced by 'Ike 'Aina at the time that group proposed an agreement with the Cohen family under which 'Ike 'Aina would manage the Pao'o property. As I stated in my April 5, 2006, letter, after walking the property with Mr. Cohen, Fred Cachola went to a community meeting in Kohala and represented that he was going to manage the Pao'o property. We believe the attached document may have been prepared for this community meeting. As you can see, this document confirms that "The lead liason [sic] between 'Ike 'Aina and the Kohala schools and communities is Fred Cachola."

Again, it seems questionable whether Mr. Cachola had disclosed the fact of his previous involvement with the Cohen family and the Pao'o project at the time he wrote to the Department requesting denial of the permit for a project that he had previously sought to support in the community.

C S

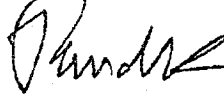
Cades Schutte Building
1000 Bishop Street, Suite 1200
Honolulu, Hawaii 96813
Tel: 808.521-9200
Fax: 808.521-9210
www.cades.com

Kona Office
75-170 Hualalai Road, Suite 303
Keilua Kona, Hawaii 96740
Tel: 808.329-5811
Fax: 808.326-1175

Samuel J. Lemmo
April 10, 2006
Page 2

Please call me if you have questions or wish to discuss this matter.

Very truly yours,



Roy A. Vitousek III
for

CADES SCHUTTE
A Limited Liability Law Partnership

RAV:bah

enclosure

cc: Jonathan Cohen
Mooers Enterprises, LLC
Geometrician Associates, LLC

ImanageDB:644767.1

**The Pao'o Parcel - - - And Ike Aina
Fact Sheet
Information for Discussions With the Kohala Community and Schools**

The Pao'o Parcel

1. Location: Just south of Lapakahi, along the coast line of Kohala
TMK (3) 5-7-01:5 (The Pao'o Parcel)
2. Area size: 11 acres of Coastal land
3. Brief description: The Pao'o parcel lies in the Moku of Kohala. It contains Hawaiian cultural, fishing and coastal resource areas on the Kohala Coast.
4. Owner: Jonathan J. Cohen
5. Desires of owner:
 - a). to protect the Pao'o parcel sites
 - b). to build a home on the Pao'o parcel in a manner with minimizes impact to the sites on the property and respects the cultural history embedded in Pao'o
 - c). to preserve appropriate traditional public access along the oceanfront at Pao'o
 - d). to encourage reasonable and appropriate access to Pao'o by community members for cultural learning and practice purposes appropriate to Pao'o while respecting the privacy of his home
 - e.) to work with Ike Aina to explore opportunities to protect and restore Pao'o parcel sites and to provide cultural learning and practice opportunities appropriate to Pao'o.;

Ike Aina

1. Who is Ike Aina? Ike Aina is a Native Hawaiian land trust, a non-profit Hawai'i corporation. The lead liason between Ike Aina and the Kohala Schools and communities is Fred Cachola.
2. What is their purpose? Ike Aina is organized to carry out education, conduct research, sponsor activities, provide technical assistance, acquire land, and implement projects relating to preservation, and restoration of land, natural resources, cultural sites, landscapes and communities in Hawaii
3. See brochure for more details; such as who is on the board of directors, mission statement, etc.

HOW CAN I GET INVOLVED IN 'IKE 'AINA PROJECTS?

'Ike 'Aina supports the *ahupua'a* concept [from the mountain to the sea] for managing all resources, including land, water (both *wai* and *keā*—fresh and sea water), plants, animals, natural & cultural landscapes, and all things social, cultural and spiritual that contribute to the well-being of the 'aina.

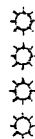
We encourage formation of *ahupua'a* councils, whenever possible, within each *moku* (district) on every island. *Ahupua'a* councils are instrumental in identifying sites and areas of significance where council members live. If you need help forming a council, or if your council needs help in protecting a resource or a practice, 'Ike 'Aina can help to begin a process for stewardship, acquisition or partnership, as the community desires.

'Ike 'Aina, in partnership with community organizations, also hosts a series of site visits to places of significance. In addition to familiarizing themselves with these areas, participants are asked to contribute to the well being of each site by doing clean-up, brush clearing, planting or other work as designated by host communities.

Call or email for more information:

PO Box 4192, Honolulu, Hawai'i 96812

Phone 808.738.0084 @ Fax 808.738-1094



'Ike 'Aina's work is guided by
Hawaiian cultural values, philosophy,
and principles.

WHAT MAKES 'IKE 'AINA DIFFERENT FROM OTHER LAND TRUSTS?

'Ike 'Aina posits a special relationship with the 'aina (land) as a living being and as kin. Therefore a special responsibility exists for man to care for the 'aina as a family member, with love and care and proper ceremony and protocol.

Akua (gods) and *aumakua* (family guardians) were part of the landscape, often taking physical form (*kinohao*) in plants, animals and other natural elements. From these cultural anchors flow

contemporary ideas of *malama 'aina* (to care for and nurture the land as a family member) and *aloha 'aina* (to love the land as family). These ideas are deeply rooted. Hawaiian concepts emphasize unity of body, mind and spirit and the relationship of people with the land, sea, and spirit world. The elements, when in proper relationship, result in balance and harmony, and in the health of all things.

'Ike 'Aina brings to the land trust concept the ideas of *kuleana* (responsibility) and *pono* (balance, harmony, right relationship).

TO PRESERVE LAND AND PERPETUATE NATIVE HAWAIIAN CULTURAL RESOURCES AND PRACTICES

'Ike 'Aina NATIVE HAWAIIAN LAND TRUST



Kahana Valley *lo'i kalo* [wetland taro fields]

The Hawaiian does not desire to conquer his elder female sibling, the 'aina, but to take care of her, to cultivate her properly, and to make her beautiful with neat gardens and careful husbandry. [Kame'elehua 1992]

WHY A LAND TRUST?

In Hawai'i land is precious. With a total land area of about 6,500 square miles, the state of Hawai'i is home to some 1.2 million residents and hosts nearly 7 million visitors annually, mostly on O'ahu island. Highly populated areas like Waikiki remind us that urbanization will quickly overrun all of Hawai'i's open spaces if developers and development are allowed to proceed at the breakneck speed that has characterized development since the 1950s.

Ike Aina is one of many land trusts in Hawai'i. All of them are here to protect some part of the islands' natural, cultural or historical legacy. Land trusts provide a means for communities to protect the significant places that are still here. Open spaces can remain so. Cultural and historical sites can retain their authenticity and sacredness. Landowners and community caretakers can plan together for the future of lands set aside as open space or sacred place. The land trust can be a "safe haven" for those who care about wellness for the earth.

Land trusts can and do help. We can help to keep development in its place. You can help us by identifying the lands that need to be held in trust. Together we can make a difference and keep our lands well.



OUR MISSION

Ike Aina was founded in 2000 as a non-profit 501 C 3. Our mission is to preserve land and perpetuate Native Hawaiian cultural resources and practices. We believe that the practitioner is essential to providing proper care of the land in all its aspects. We further believe that the land, itself, calls to us, whether Hawaiian or not, to restore that which has been damaged and to protect that which has been restored. The practitioner is the key to caring for the resource. We are mandated to "grow" practitioners. The lands we acquire and/or *malama* (care for) are the training grounds. In the process of training, the practitioner learns to heal, and the land is healed, and the people benefit.

OUR BOARD OF DIRECTORS

Fred Cachola, Native Hawaiian Historic Preservation Committee, Office of Hawaiian Affairs, O'ahu

Suzanne Case, The Nature Conservancy

Eric Enos, Ka'ala Farm

Paulo Fujishiro, Native Hawaiian Historic Preservation Committee, Office of Hawaiian Affairs, Maui

Neil Hannahs, Kamehameha Schools

David Helela, Cultural Practitioner, Kauai

Bob Hera, Native Hawaiian Historic Preservation Committee, Office of Hawaiian Affairs, Lanai

Calvin Hoe, Hakuipu'u Ohana, Queen Lili'uokalani Children's Center, O'ahu

Tim Johns, Damon Estate

Mahelani Kamau'u, Native Hawaiian Legal Corporation

Lilikala Kame'eleihiwa, Director, Center for Hawaiian Studies, University of Hawai'i - Manoa

Shad Kane, O'ahu Council of Hawaiian Civic Clubs

Solomon Kaopuki, Hui Malama Pono o Lanai

Kekiki Kekipi, Ho'oulu Lahui, Paula'a Cultural Education Center, Hawai'i Island

Thomas Lenchanko, Wahiawa Hawaiian Civic Club, O'ahu; 'Ike Aina President

Manu Meyer, Native Hawaiian Historic Preservation Committee, Office of Hawaiian Affairs, Hawai'i Island

Maria Orr, Archaeologist, O'ahu

David Scott, Historic Hawai'i Foundation

Raynard Soon, Dept. of Hawaiian Home Lands

Hannah Springer, Cultural Practitioner, Hawai'i Island

Vicky Holt Takamine, Ilio Ilokalani Coalition, O'ahu

Chipper Wichman, Limahuli Garden, Kauai

Lynette Hii'ilani Cruz, Executive Director

cades • schutte

a limited liability law partnership

Facsimile Cover Sheet

DATE : April 12, 2006

TO : Name Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands
Fax No. 808-587-0455
Phone No. 808-587-0382

FROM : Name: Roy A. Vitousek III
Fax Number: (808) 326-1175
Phone Number: (808) 329-5811
E-mail Address: rvitousek@cade.com

RE : Subject: Conservation District Use Application HA-3269;
Applicant: Jonathan Cohen; TMK: (3) 5-7-001: 005
File No.:
Pages: 5

Transmitting: 4/12/06 letter and enclosure from Roy A. Vitousek III to
Samuel J. Lemmo

Remarks:

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2006 APR 13 P 12:29
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

If all pages are not received, please call Barbara A. Hui at 808-329-5811

THIS MESSAGE IS INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via the U.S. Postal service. Thank you.

ImangeDB:643997.1

C S

EXHIBIT 20

Cades Schutte Building
1000 Bishop Street, Suite 1200
Honolulu, Hawaii 96813
Tel: 808.521-9200
Fax: 808.521-9210
www.cades.com

Kona Office
75-170 Hualalai Road, Suite B-303
Kailua Kona, Hawaii 96740
Tel: 808.329-5811
Fax: 808.326-1175

codes schutte

Roy A. Vitousek III
Direct Line: (808) 329-5811
Direct Fax: (808) 326-1175
E-mail: rvitousek@codes.com

April 12, 2006

Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
P. O. Box 621
Honolulu, Hawaii 96809

Re: Conservation District Use Application HA-3269
TMK: (3) 5-7-001:005
Applicant: Jonathan Cohen, Aloha Properties, LLC

Dear Mr. Lemmo:

This is a response to your letter of April 11, 2006. May we offer the following comments.

CDUP HA-1948. What makes historical sites significant is that they have been there for an extended period of time. The sites, resources, and the practices associated therewith were in place for many years before 1984 and were specifically discussed and considered in CDUP HA-1948. Any cultural issues existent today existed before 1984 and were considered by the Board when the CDUP was approved.

Application Process. You say, in italics, that, "We did not solicit comments." What Ms. Mills did say was:

Although the comment period has ended, should you have comments or concerns please send written documentation to our office and the applicant's representative Greg Mooers by March 29. (Emphasis added.)

People can, and will have the opportunity to, draw their own conclusions as to whether Ms. Mills solicited comments.

I did not know, until your letter of April 11, 2006, that Ms. Byrne had written to the Department about a different property (the Reisch property). I am not clear

C S

Cades Schutte Building
1200 Bishop Street, Suite 1200
Honolulu, Hawaii 96813
Tel: 808.521-9200
Fax: 808.521-9210
www.codes.com

Kona Office
75-170 Hualalai Road, Suite 303
Kailua Kona, Hawaii 96740
Tel: 808.329-5811
Fax: 808.326-1175

Samuel J. Lemmo

April 12, 2006

Page 2

why, when you received a letter about the Reisch property, you asked for comments on the Cohen application.

Further, your statement that, "The late comments we received on your client's application were electronically sent to you or faxed to you the moment we received them" is interesting. On April 11, 2006, we received a copy of a letter from the Chairperson addressed to Mr. Cachola and Ms. Byrne which refers to an "attached document regarding retracting the FONSI for the subject EA." We have never received this document from your office or from Mr. Cachola or Ms. Byrne and it is not attached to the letter. This raises an issue as to whether your division does, in fact, provide late comments "the moment we received them." May we please get a copy of the "document regarding retracting the FONSI." I guess when we finally get these comments from you we will see when you received them.

The relevant statutes and DLNR and OEQC rules provide the legal framework for developing comments during the application process. The rules impose some rigor on the process to assure reliability, timeliness, and some measure of protection for an applicant's property rights which, as you know, are also protected by constitutional mandate. The comments received during the application process, including the shoreline certification, burial treatment, EA, CDUA, and public hearing processes were favorable to the applicant. Yet you told me after you made your draft recommendation that your staff planner "did not like the proposal." It appears that what occurred is that your staff planner ignored all the very real positive comments because they were inconsistent with her personal likes or dislikes. This is not "doing their job in furtherance of their constitutional mandate."

Public Access. The fact that people use the coastline for surfing, fishing, and the like was discussed in detail in the CDUA. You are correct that I have surfed there for maybe ten (10) years. I have camped there because I had permission to do so. There are other places I have surfed and fished where people build homes or other developments and I continue to surf and fish in these places. I presume the same is true on all islands. This is one of the facts of life. People still surf at Waikiki and Ala Moana.

Nowhere does the law say that traditional or recreational uses of natural or cultural resources outweigh private property interests. The law says that if there are identified cultural, historical, and natural resources and if these are traditional and cultural uses of those resources, an effort should be made to mitigate loss of those uses in the context of development.

That is why the Applicant in this matter walked the land with PASH representatives, native Hawaiian lineal descendants, the Na Ala Hele representatives, Ala Kahakai representatives, the State Surveyor, and went through preservation plans and the

Samuel J. Lemmo

April 12, 2006

Page 3

Hawaii Island Burial Council This is why the Applicant is preserving all cultural sites, performing a burial treatment plan, and proposing a delineated coastal trail. These are the specific measures proposed by the Applicant which could be required by the Board as conditions of approval.

If you "hear complaints with development of the site," perhaps you could explain to the people complaining that the parcel is private property and the owner has certain rights under the law. It seems to me that if the State puts some real effort into caring for the State-owned land and ocean resources which completely surround the Applicant's property you would hear fewer complaints.

Traditional and Cultural Practices. As I am sure you know, Dr. Abad is Fred Cachola's daughter. In 2002 Mr. Cachola, through 'Ike 'Aina, approached the Cohen family to be their representative in the Kohala Community. Mr. Cohen declined after Mr. Cachola over-represented his capacity in a public meeting in Kohala. Mr. Cohen has been working with the families who were identified during the Burial Council process as lineal descendants of Pao'o.

Hopefully, you and staff planners will use their "specialized expertise in collecting and evaluating data" to evaluate the reliability of the testimony from someone who previously proposed to represent and support the Applicant and is now attacking the Application. Both Mr. Cachola and Dr. Abad seem like competent people. It is just that Mr. Cachola is being inconsistent in his representations and, generally, the opinions of independent experts, rather than daughters of complainants, are considered more reliable.

We were given a copy of comments from the Na Ala Hele division to the DLNR and a map which they claimed determined that the State owned the trails under HRS § 264-1(b). The letter did not purport to identify or refer to any grave and if you actually look at the map provided, it is not legible. We learned from Mr. Mike Issac's letter dated April 4, 2006, apparently faxed to DLNR by Mr. Cachola, that the map was apparently a 1924 Territorial Surveyor's map. Mr. Issac has written on the map "Kauwe's Grave." It is our understanding that SHPD had classified this site as a "shrine" based on the archaeological studies done in conjunction with the previous CDUP.

Nonetheless, in keeping with how the Cohen family has handled this matter, the Applicant has asked the Hawaii Island Burial Council to place any questions relative to this site on the agenda for its April 20, 2006, meeting. The Applicant would like any concerns addressed in a proper manner and in the appropriate forum. No matter what, whether this is a shrine, or a burial, or something else, the site will be preserved as is and in place. In fact, all cultural sites, all cultural practices associated with those sites, the ocean, coastline, and access thereto are being preserved. We are unclear as to why this is an issue.

Samuel J. Lemmo

April 12, 2006

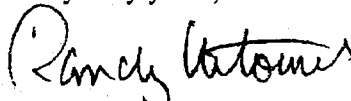
Page 4

Acceptance of the CDUA, Issuance of FONSI. We do not believe that accepting the CDUA for processing or issuing a FONSI constitutes approval of the proposal. We have never taken that position. We believe a Finding of No Significant Impact is a finding of no significant impact. We do not believe that the BLNR action is ministerial.

We do believe that when a proposal goes through the various processes established by law and meets all the requirements for approval, the Department should not make a negative recommendation because a planner "does not like the project" or because a division chief will not make a favorable recommendation "unless everyone agrees." These are your words, your reasons for your division's actions, not mine.

Please call me if you have questions or wish to discuss this matter.

Very truly yours,



Roy A. Vitousek III

for

CADES SCHUTTE

A Limited Liability Law Partnership

RAV:bah

enclosure

cc: Jonathan Cohen
Mooers Enterprises, LLC
Geometrician Associates, LLC

ImanageDB:645052.1

April 13, 2006

Roy A. Vitousek III
Direct Line: (808) 329-5811
Direct Fax: (808) 326-1175
E-mail: rvitousek@cade.com

Samuel J. Lemmo, Administrator
Kimberly Tiger Mills, Planner
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
P. O. Box 621
Honolulu, Hawaii 96809

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2006 APR 17 A 11:21
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Re: Conservation District Use Application HA-3269
TMK: (3) 5-7-001:005
Applicant: Jonathan Cohen, Aloha Properties, LLC

Dear Mr. Lemmo Ms. Mills:

We received the attached documents by fax on April 12, 2006. Unfortunately, we must not have gotten a complete copy of the letter from OCCL to SHPD soliciting comments on the CDUA because the caption of the letter refers to a "stamped date" but there is no stamped date on the letter you provided.

We thought that the requests for comment had gone out to other Divisions months ago as that had been, in our experience, usual practice of the department. The requests for comments which your Division sent out which are included as exhibits to the Final EA have the stamped date of November 18, 2005, and include Historic Preservation as one of the addressees. Thus, it appears that the request SHPD was purporting to reply to on April 12 was a new request sent out long after the comment period was closed. In fact, it appears to be a specific solicitation of late comments from an agency which had not responded to the earlier, timely request. We note that the letter itself says:

If there is no response by the suspense date we will assume there are no comments. The suspense date starts from the date stamp.

When we spoke with you last week you said you had not received comments from SHPD and that you had asked them for comments. I am hoping you did not submit an undated second request letter to make it appear that this was a response in the ordinary course, rather than a late comment specifically solicited by OCCL. You were so adamant in your letter to me of April 11 that Ms. Mills had not solicited late comments from Mr. Cachola and Ms. Byrne, it would be hard to believe you would solicit late comments

C S

EXHIBIT 21

Cades Schutte Building
1000 Bishop Street, Suite 1200
Honolulu, Hawaii 96813
Tel: 808.521-9200
Fax: 808.521-9210
www.cades.com

Kona Office
75-170 Hualalai Road, Suite 303
Kailua Kona, Hawaii 96740
Tel: 808.329-5811
Fax: 808.326-1175

Kimberly Tiger Mills
April 13, 2006
Page 2

from another division of the DLNR which had not made timely comments to the initial request. I would have thought that if you were requesting late comments or if you were asking SHPD to address a "new" issue, you would say so directly in your request letter.

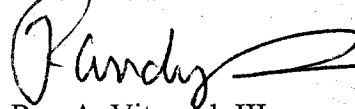
As I said in my letter to you yesterday before we got the SHPD late comments, the Applicant's archeological consultant had already requested that the issue of site 2383 be placed on the meeting agenda for the Hawaii Island Burial Council's April 20 meeting.

This letter will also acknowledge receipt of the "Request to Retract FONSI . . ." dated April 1, 2006. We received this document by email from Ms. Mills at 12:35 p.m. on April 13, 2006.

We assume, based on what we have seen over the last couple weeks, that late comments are being solicited from other agencies and look forward to receiving them "the moment they are received."

Please call me if you have questions or wish to discuss this matter.

Very truly yours,



Roy A. Vitousek III
for

CADES SCHUTTE
A Limited Liability Law Partnership

RAV:bah

enclosure

cc: Jonathan Cohen
Mooers Enterprises, LLC
Geometrician Associates, LLC

ImanageDB:645346.1

LINDA LINGKE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAACANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAWAOKAWA ISLAND RESERVE COMMISSION
LAND
STATE PARKS

FACSIMILE TRANSMITTAL SHEET

TO: <i>Greg / Randy</i>	FROM: Office of Conservation and Coastal Lands
COMPANY: <i>888-1456</i>	DATE: <i>4/12/06</i>
FAX NUMBER: <i>326-1175</i>	TOTAL NO. OF PAGES INCLUDING COVER: <i>4</i>
PHONE NUMBER:	PHONE: 808-587-0377
RE: <i>HA-3269</i>	FAX: 808-587-0322

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

F Y / 1
and
F.Y. Records

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCES MANAGEMENT
ROBERT K. MASTUDA
DEPUTY DIRECTOR - LAND
DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCES MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KURE AND MIDWAY ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL-TM

File No.: HA-3269

Acceptance Date: November 10, 2005
180-Day Expiration Date: May 09, 2006
SUSPENSE DATE: 21 Days from
stamped date

MEMORANDUM:

TO: Aquatic Resources, Conservation and Resources Enforcement, Forestry and
Wildlife, Historic Preservation, Engineering, Hawaii District Land Office

FROM: Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

SUBJECT: REQUEST FOR COMMENTS
Conservation District Use Application HA-3269
BOARD PERMIT
Single Family Residence

APPLICANT: Greg Mooers for
Jonathan Cohen, Aloha Properties, LLC

TMKs: See Materials

LOCATION: See Acceptance Letter and attachments

PUBLIC HEARING: YES X NO

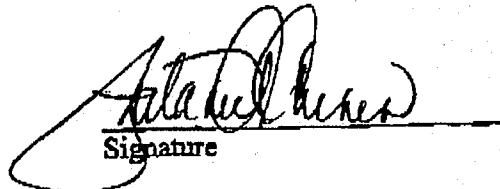
Please contact Tiger Mills at 587-0382, should you have any questions on this matter.

If no response is received by the suspense date, we will assume there are no comments. The
suspense date starts from the date stamp.

☒ Comments Attached

☐ No Comments

Attachment(s)


Signature

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

YVONNE Y. IZU
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONSERVATION
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

April 12, 2006

Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813

Log No. 2006.1115
Doc. No. 0604MC01

Dear Mr. Lemmo:

Thank you for providing the State Historic Preservation Division the opportunity to comment on Conservation Use Application HA-3269 for a single family residence as requested by Mr. Greg Mooers for Jonathan Cohen of Aloha Properties, LLC.

Our office previously reviewed and accepted the archaeological inventory survey report for this property, which identified four burials which were assigned state site numbers 6440, 6441, 6442, and 6443. On July 17, 2003, the Hawaii Island Burial Council (HIBC) determined that these burials should be preserved in-place and requested that a 15-foot protective buffer be established around them. The most recent burial treatment plan submitted to my office increases the recommended buffer to 30-feet. Division staff are finalizing their review of said plan with the intent to approve the 30-foot buffer zone. Once approved, no ground disturbing activity can be conducted within these buffer zones.

Staff are also reviewing a preservation plan for other archaeological sites located on the property. It is my understanding that the landowner is proposing preservation in-place of these sites, and has offered to protect them by establishing a 15-foot buffer zone around each site. We believe this proposal is reasonable and it also our intent to approve this proposal. However, we are unable to accept the current preservation plan as final as we have recently received information indicating that a site designated as a shrine during the inventory survey may be a burial site (state site no. 2383). We have received information indicating that the site contains the remains of Kauwe, and my staff are currently reviewing historical maps to determine whether this site contains a human

Mr. Samuel Lemmo
April 12, 2006
Page 2 of 2

burial. Should this be the case, the HIBC who maintains jurisdiction for all burial sites identified during archaeological survey work will be contacted to make a determination of preservation in-place or relocation. Once a determination is made by the Council a burial treatment plan will need to be submitted to this office for review and approval. That plan will identify whether the burial is to be preserved in-place or relocated to another site. It will also establish the buffer for this particular site. In this particular case, we would favor the establishment of a 30-foot buffer zone at the minimum.

Aloha,



Melanie A. Chinen, Administrator
State Historic Preservation Division

April 4, 2006

Testimony on
Cultural Impact Assessment for the Proposed Development of J. Cohen's Single Family
Residence in Conservation District Land
(TMK: 3-5-7-01:5) Located at Pao'o, Kohala

Submitted to: State of Hawaii
Dept. of Land & Natural Resources
Office of Conservation and Coastal Lands
Attention: Kimberly K. Tiger Mills, Planner

This letter is to voice my concern on the shoreline that people are buying and wanting to build homes.

I am David Rocha. Me and my ohana were born and raised in Kohala. My wife and her ohana were also born and raised there too.

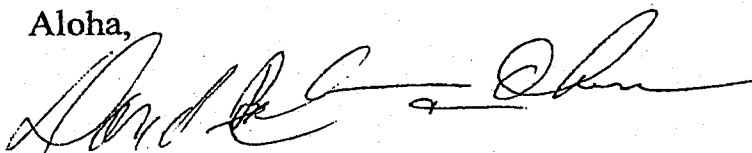
My grandfather Heloke Mookini, always said to protect the shoreline, "for this is where our ancestors landed and lived."

No one person or company should be permitted to own any historical coastline in the Kohala district. The state or county should acquire and protect all these areas.

Mr. J. Cohen permit (CDUA-HA-3296) to build must be denied.

Me and my ohana fully support the Fred Cachola and Gail Byrne project:
Malama Kohala, Kahakai Project.

Aloha,



David Rocha and Ohana

480 Hoopuni Street. . . .Hilo, HI 96720
Phone (808) 935-0507

EXHIBIT 22

Mike Issac
P.O. Box 116
Hawi, Hawaii, 96719

April 4, 2006

Department of Land and Natural Resources
Office of Conservation and Coastal Lands
P.O. Box 621
Honolulu, HI 96809

RE: Denial of Cдуа HA-3269 for TMK: (3) 5-7-1:5. Mr. Cohen's proposal for
to build a single dwelling and associated improvements at Pao'o, Kohala.

Dear Members of the Board for the Department of Land and Natural Resources

I strongly urge you to deny this Cдуа HA-3269 for the following reasons:

1. Infringement on burial sites and negative impact on ancient spiritual beliefs

The proposed dwelling is a massive, private vacation retreat of close to 5,000 sq. ft. of connected structures with living spaces, swimming pool, deck with connecting paths, landscaping and storage areas and associated improvements, access trails and roadways -- which when collectively combined demonstrates a blatant and deliberate intrusion on burial sites. These burial sites are considered spiritually significant and sacred to me and other Hawaiians. I consider the placement of this intrusive structure at this ancient site as an arrogant affront to my spiritual and cultural beliefs. This so called "single dwelling" will have a severe negative impact on my continuing desires to touch, feel and experience the mana and mana'o of my Hawaiian ancestors.

I consider the spiritual needs of Native Hawaiians to be much more critical than the "recreational needs" of Mr. Cohen, his wife and three grown daughters. Their recreational needs can easily be met in many other areas of our world and he obviously has the financial resources to acquire and build at those sites. However, those special places (wahi pana) that are sorely needed to nurture the spiritual needs of Hawaiians are dwindling drastically, and our precious Hawaiian fishing village at Pao'o is one of those few remaining places that must be preserved in perpetuity for such purposes. This ancient parcel of land should not be allowed to become a private playground for very wealthy non-residents who do not understand our culture or our spiritual needs. It must be preserved and protected for Hawaiians. These are compelling reasons why the BLNR should deny this Cдуа.

2. Ignorant or deliberate omission of a very significant burial and sacred site, and questionable research.

The proposal discusses historical, archaeological and cultural concerns primarily for Site 2382 which was disturbed previously. Most of the discussion for data recovery, preservation and proposed mitigation activity is related to this disturbed site. In contrast, Site 2383 is hardly mentioned at all and is noted consistently in three Tables of Archaeological sites as a "Probable Shrine (ko'a)". This "Probable Shrine" designation may have influenced it's eventual location as a prominent "center piece" directly in front the main terrace and swimming pool. We strongly disagree with the identification and function designation of this significant site and strongly object to have it resemble a "center piece" or landscape ornament for Mr. Cohen's front yard.

For many years myself and other Hawaiians have known this site to be a burial enclosure for a very prominent Native Hawaiian. To confirm our long standing beliefs, we studied maps of the Kaipuhaa-Pao'o area, and located *Hawaii Territory Survey, Registered Map No. 2711, by C.L. Murray, dated February, 1924*. This map confirmed that Site 2383 is indeed what we always believed it to be, a burial enclosure for a prominent Native Hawaiian. This map confirmed that this prominent Hawaiian is Mr. Kauwe; who in 1856 bought what was at that time a 16-acre parcel, Land Grant No. 1997. (see attached map with identifying labels)

In addition, we believe that kupuna Kauwe must have had special status and/or rank to acquire this aina. Further, the fact that kupuna Kauwe's iwi were placed at this site, greatly magnifies and accentuates the Hawaiian cultural, spiritual, and religious value that is now a more integral and confirmed part of this unique wahi pana. This walled, burial enclosure at Pao'o has great mana.

EXHIBIT 23

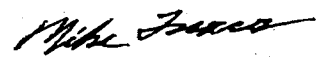
We believe that the consultants for this Final Environmental Assessment and Cultural Impact Assessment...and the four cultural consultants who advised them were not aware of this fact and overlooked this burial notation which is clearly labeled on this map. This same map was actually sent to Mr. Cohen's consultants as exhibit A, attached to a letter submitted by Na Ala Hele in January 9, 2006...and again they failed to read the map and note the significance of Site 2383.

A few years ago, I visited Pao'o with kupuna Marie Solomon, State Archaeologist Pat Macoy and Martha Yent from the Division of State Parks. I pointed out Site 2383 as a special burial enclosure. I also told them that the walls of this enclosure hold special meaning for those Hawaiians who can see and understand the hidden messages that are in the wall. This burial enclosure is not just a simple rock wall, but rather, a unique document of the Hawaiian spiritual world. Therefore I am very concerned that the applicant may attempt to alter and restore this walled enclosure and other rock walls in this spiritual area. The applicant must not be allowed to move any of the rocks in and around this walled enclosure.

Other historical errors, such as on page 21 (Kamehameha's non-participation(?) with Capt. Cook's activities off the East coast of Maui) and on page 22 (Council of Chiefs meeting at Kawaihae (?) to abolish the Kapu system) naturally generates more doubt and raises serious questions regarding the integrity and accuracy of Rechtman Consulting and the cultural consultants.

The major omission of Site 2383 as a significant burial and spiritual site in all of the plans that were submitted, coupled with questionable historical research and conclusions are sufficient rationale for the BLNR to deny this CDUA.

Sincerely yours,



Mike Issacs
A Kohala Hawaiian

Toni Withington
P.O. Box 76
Hawi, HI 96719
April 13, 2006

Mr. Peter T. Young, Chairperson
Board of Land and Natural Resources
P. O. Box 621
Honolulu, HI 96809

Re: Conservation District Use Application HA-3269
TMK (3) 5-7-001:005
Cohen residence, Pao'o, North Kohala
Subject: testimony of Toni Withington for April 28 meeting
(see list of activities related to the Kohala coast - Exhibit 1)

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2006 APR 17 A 9:23
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Dear Mr. Young,

The decision you make today will do one of two things. It will grant several millions of dollars in speculative real estate value to a very rich man from Massachusetts whose vacation complex will in effective plug public access to one of the few portals for public entry to the ocean along our entire coastline. Or you will help the community groups of North Kohala continue their more than 20-year effort to preserve one of the last accessible open coastlines in our state. Also to preserve the quiet sacredness of important Hawaiian historical sites.

This application before you is a mistake. You should not be asked to decide this issue. Pao'o is a public resource used by the people of Kohala since it was first settled. It is not a piece of land. It is lihiakai, a linking of land and sea. It is a portal through which people go into and come out of the ocean. On Oahu you have many, many portals. On the rugged, rocky coast of Kohala we have very few. This is one. To put a giant house on our portal is worse than building a fence and a gate. It is shutting the flow of human activity from one of our last remaining unregulated portals.

The people of Kohala have been calling on our state and county governments for a long time to keep our coast open. Through our efforts the Legislature, the County Council, the planning documents prepared by planning agencies both state and county have called on you specifically -- the DLNR -- to help us in preserving the open nature of our 29-mile

EXHIBIT 24

coastline. (Exhibit 2) This Pao'o parcel is one of 4 small parcels at the makai edge of giant state-owned ahupua'a specifically targeted for state acquisition because of its resource value to the public. (Exhibit 3) Most of the leeward coast is owned by large land holders. Purchasing or trading for the small parcels would have a large impact toward keeping the coast open. (Exhibit 4) This parcel has been used regularly and continuously for fishing, shell and limu picking, hiking, surfing, picnicking, camping, and solitude. Hui Lihikai, Citizens for Protection of the North Kohala Coastline has repeatedly asked for and worked with the DLNR toward acquisition of this land following the board action to end the previous CDUP HA-1948 here. I have met with three Chairpersons specifically about acquisition of this and other small private coastal lots. I have spoken before the board many times and shown our coastline video-- North Kohala Coast - The Silent Treasure -- to about 4 rotations of board members. I have met with the State Parks director and his planners multiple times, OSP dozens of times.

A few days ago our Mayor Harry Kim released the report of the Hawaii County Public Access, Open Space and Natural Resources Preservation Commission. Under high priority properties and/or entitlements for partnership preservation is listed --- Cohen (Lapakahi State Historic Park area).

Why are we here? Why is this not public land now?

We have prepared material to show you backing up what we say. We will show you how few portals to the sea there are on our 19-mile leeward coast. (Exhibit 5) We will show you how and where the public has on-site proof of public use on this particular parcel. (Exhibit 6) We will show historically how Pao'o was so important to the comings and going of people by sea when weather prevented landing at Honoipo and Mahukona. We will show fishing, shell and limu picking as a continuous, and in hard economic times, a necessary use. There are families who for generations have driven or hiked down the coast to picnic, party and surf in this specific place. We will show how we fought through State boundary reviews, County general plan reviews, open space and viewplane studies, through resolutions by the County Council, the legislature, the Governors state of the state address, petitions and more petitions to keep our coastline open.

This CDU application, as professional and slick as it is, only shows you a thin slice of this sea portal. The report consults government agencies, historic experts and Hawaiians who live somewhere else. It leaves out the people that use it. It leaves out completely how the place is a link to the

ocean. It pretends it is wilderness occupied only by ancient Hawaiian sites. Wrong. It is our recreational place, our beach, often our food box, always a place of getting in tune with our natural setting. Mr. Cohen and his family are welcome to build their home with ours up in the Kohala community. I can not understand why anyone would build in our precious and fast disappearing open coastline.

WHY WERE WE LEFT OUT? I want to apologize to you for coming into this CDUA process so late. Our normal methods for following EA reports and board agendas failed this time. Sorry. However it is also inexcusable that the compilers of this application did not come directly to the people of Kohala who are pivotal in preserving an open coastline. They know better. All three of the representatives of the Cohens -- Vitousek, Mooers and Terry -- know me personally and know the coastal preservation activities the groups in Kohala have undertaken and completed. They know of the monumental effort that Hui Lihikai took to report to DLNR the multiple misrepresentations of ownership and violations of grading, road building and locking gates on State land in Pao'o --- this parcel. (for a summary of those proceedings see Exhibit 7) Those reports resulted in the Land Board taking its first ever action leading to the nullification of a residence permit on conservation land -- this land. The representatives failed to call any of the organizations in Kohala that have been fighting for an open coast -- Hui Lihikai, Kamakani o Kohala Ohana, Malama Kohala Kahakai, Hawaiian Civic Club, Save Our Surf among others. Mr. Vitousek has told you himself that I was working directly with DLNR and the legislature to help this specific lot become state land. My phone number is in the book. My address has been the same for 31 years. When I'm away messages are forwarded. I was not contacted.

Their list of contacts are on page 3 of the EA -- Waimea Outdoor Circle, Sierra Club (based in Hilo and Kona), Kawaihae Puaka'ilima Comm. Assoc. Hello. Where is North Kohala?

MEAT OF THE MATTER

The application contains other serious errors that, had the authors bothered to check with us, could have been worked out. But now the errors in our estimation are significant enough to call for a rejection of this request. Specifically:

1. The application fails to identify this property as containing the only accessible natural beach-like ocean portal between Mahukona and

Kawaihae

2. The applicant failed to identify and notify groups and individuals who have professed use and interest in THIS property on record in DLNR files.
3. The applicant failed to notify any groups in North Kohala.
4. Relocation of the State-owned jeep road off of Cohen's property would constitute a State Land Use Boundary change, which is not addressed in the CDUA.
5. Reasons given for relocating the road are inadequate.
6. The line indicating the relocated road is imprecise and an inadequate description of the proposed relocation.
7. The proposed relocated jeep road is too far mauka, denying the public continued customary use of the beach portal of Pao'o.
8. The application identifies the boundary between the conservation and agricultural land as being the mauka edge of the jeep road, while the boundary interpretation shows it at the center..
9. By relocating the jeep road as proposed the State would be granting State land to a private owner without following normal procedures.
10. Lateral trail access, the Ala Loa or Ala Kahakai, through the property is promised but not identified.
11. No provision is made for public parking near the beach ocean portal.
12. Public parking is shown on one applicant map on the northern tip of the parcel, but is not adequately identified, described as to size or discussed as to how the parking lot will be improved.
13. The roadway access permit between Akoni Pule Highway and the parcel has serious lingering legal problems in that the EA and archaeological review of the roadway were not done. Also evidence exists to show the current roadway does not follow the surveyed easement.

14. The application does not address the problem of additional traffic on the easement road. Described as a vacation home, the owner apparently intends to have a year-around caretaker living on site. Servicing of the many support systems will generate additional traffic on the one-lane road.

15. Hawaii county and the University of Hawaii identified problems with building so close to the certified shoreline. The county recommended relocation of Zoe's room, but the applicant has not done so.

16. A residence consisting of 7 separate structures does not comply with Conservation District rules saying residences should be ~~(insert attached rule)~~

"all structures connected or best alternative." CH 13-5-41 HAR

17. Reasons given for exemption from the no detached structures rule are inadequate. Usually the exception is for steep or difficult terrain; not a flat surface as here.

18. If the State-owned jeep road is relocated as the applicant proposes, the parcel would be completely single. Therefore all structures proposed in the agriculture land would have to be attached to the residence and square footages added to the total.

17. Drawings submitted by the applicant for a 5-bedroom, 6-bath house exceed the total 4,943 square feet represented by the applicant in the text.

18. Terraces walled in on three sides with stone floors should be considered in the square footage of the residence.

19. Outdoor showers with drains should be considered part of the residence structure or part of water features.

20. The application for a large walled-in residence so close to the ocean at the location of a continuously and frequently used public portal to the sea does not meet the standards described in Chapter 13-5-30 (8) of State law stating: "The proposed land use will not be materially detrimental to the public health, safety and welfare."

DISCUSSION

BOUNDARY CHANGE? Specifically, the boundary line between the Conservation and Agriculture land on this parcel "follows the jeep trail." (Exhibit 8) Cohen wants the jeep trail relocated behind his property. So?

Will the entire parcel TMK (3) 5-7-001:05 be in conservation? Will therefore the exemptions to build other structures on the ag land not be permitted? Will the ag structures have to be attached as per Chapter 13-5 Exhibit 4? This project has 7 separate standing structures. Will square footages of the sheds have to be included in the total? This is only fair as the project should be viewed as one entity. If the parcel is left mixed conservation and ag, where is the boundary line once the road is moved? We do not get to know the county's stand on this as the report cut off the last page of the Planning Director's letter in the EA Appendix 1A. This issue of using the conservation/ag boundary to create new parcels of multiple jurisdiction is a hot issue for us. Our Planning Director Christopher Yuen has described it as a Pandora's box. I am surprised Cohen would wish to open it. How can you approve this project without knowing the exact location of the relocated jeep road? How can there be ag land makai of the road? Bottom line: Is the Land Board making an open-ended boundary change here? Seems to me if the applicant wants to change the publicly owned road he will have to seek a State Land Use Boundary change.

GIVING AWAY STATE LAND? This application does not identify where the lateral jeep road will be relocated. Relocating coastal access is a GIANT issue in Kohala. We have spent years battling to return shoreline access moved by the Land Board without hearings in Puakea for George Isaacs. Moving the access road should not be done by Land Board action here without proper public notification of where it is going to be. And public hearings. Beyond that is the issue of who will own the land under the existing public access jeep road. Na Ala Hele has told you "it has been determined the coastal trail alignment is owned by the State of Hawaii through the Board of Land and Natural Resources pursuant to 246-1(b) Hawaii Revised Statutes." (Exhibit 9) Apparently there is no metes and bounds survey of the trail/road as Na Ala Hele calls for one to be prepared. The records show no survey. So we don't know how much land the State owns through the Cohen property. If the trail/road is relocated mauka somewhere on State property what happens to the land under the road? Does Cohen get it for free? He gets the road moved without public hearing AND free land?

ROADWAY ACCESS ISSUES I believe there are still legal issues of the vehicle access from Akoni Pule Highway that have not been adequately resolved. The roadway was illegally bulldozed by previous owner Michael

Rearden (Reardon/McGonigal). He received preliminary permission and paid to have a survey done. But he had not 1) produced an EA 2) done an archeological survey 3) paid for or 4) finalized the permit with the Land Division. There was no permit for the original easement. These inadequacies are pointed out in a letter from Land Division dated July 13, 1995. (Exhibit 10) Dean Uchida, administrator of the Land Division, told Maryl Realty the owner would have to reapply for an access easement. "An Environmental Assessment is required pursuant to Chapter 343 HRS." Also "The archaeological survey you cited is incomplete in our files and does not include a map." In 1994 Hui Lihikai reported to the Land Division in Hilo that the illegal road bulldozed by Rearden (Reardon, McGonigle) "appeared to wander differently than his survey indicated." The ground did not show the usual flagged markers associated with legal grading. We asked that the bulldozed road be surveyed on ground. Glenn Taguchi, then Land Division head in Hilo, said that was impossible, but when Rearden or a future owner applied for an easement, it would be done then.

Nine years later in 2003 Land Division approved a road easement for Cohen. Harry Yada, current head of Land Division in Hilo, says a staff member wrote a letter in Sept. 1997 to owner Heidi Galke, trustee of the John and Josephine Selak Trust, exempting the easement from the EA process, apparently not knowing about the previous recommendation. No archaeological review appears in the record, according to Yada. Archaeology review for the EA done for Cohen's project includes only the scope of the coastal parcel. No review of the access easement is in DLNR records.

Was the existing road surveyed to see if it actually follows the easement as we requested? The survey presented in Cohen's EA Appendix 1A showing a date of September 14, 2001 is identical -- number for number -- to the survey Reardon ordered in 1988 before he illegally bulldozed the road. (Exhibit 11) What are the chances of that? Was the 1988 survey just re-submitted without checking the location of the road? The application says the access easement is 14.68 acres while both surveys say 1.468 acres.

TRAFFIC ON THE ACCESS ROAD The public is used to using both the northern and the Rearden-made access roads. Because both are very narrow with few places to pull out, there is often a lot of backing up to do when meeting traffic. It is unclear from the CDUA report how much traffic the residence will generate. Will the Cohens have household staff with them when visiting? Since housing is not provided on-site, will staff be making daily trips on the road? Will Cohen himself maintain the many systems he plans to put in --- solar panels, electrical system, generator, water pump,

water treatment system, sewage treatment, pool filters, propane system -- or will he have service people using the road on a regular basis? Does he plan to have a year-around caretaker? Where will the caretaker live? It is important for those of us who use the access roads to know how much traffic is expected to be generated by the project.

PLAGUE OF MICE The environmental assessment completely ignores what we who use the area know to as periodic plagues of mice population spikes. On years like this when unusual rainfall produces masses of grass and seed-laden brush, the population of field mice skyrockets. It gets so bad that you can be seated at a shoreline picnic site eating off a paper plate and see 6 to 8 mice in just the view beyond your plate. They stick around for months at a time until the food supply runs out or they are eaten by a resulting rise in the pueo and i'o populations. Like the wildfires mentioned in the EA, mice are a fact of Kohala shoreline life.

SHORELINE SETBACK The application says structures will be 50 feet from the certified shoreline. The shoreline at Pao'o is subject to high surf at times and storm waves have been observed to spread debris much higher than the certified shoreline. This debris line was observed by a official of the County Planning Department on an inspection June 1, 2005. This wash of the waves "may be within 7-10 feet" of the detached Zoe's Room in the plan, according to the Planning Department. (See County Planning Department letter SMAA 05-42 dated June 23, 2005, Exhibit B in Cohen's application) Though the applicant says all structures will be 50 feet from the shoreline, the Planning Department noted that the rock wall enclosed terrace of Zoe's room and the round Open Terrace "are situated within 2 feet of the 40-foot shoreline setback line." Condition 5 of the SMA exemption says: "The detached element identified as Zoe's Room on the site plan shall be relocated so that it shall be not closer than 50 feet from the Dec. 4, 2004 certified shoreline and not closer than 40 feet from any vegetation line."

The county also noted "significant mauka movement of the shoreline abutting the proposed building site" between the May 2001 and the Dec. 2004 shoreline surveys. In three years the shore moved mauka. The Integrated Shoreline Policy prepared by the DLNR calls for existing advanced scientific data to be applied to all applications for coastal construction. Criteria of the new policy ought to be applied in this case in light of the rising shoreline. But it wasn't.

In response to comments from the University of Hawaii Environmental Center recommending "an historically based setback

provision” such as is used in Maui County, Cohen’s representative Ron Terry said on January 26, 2006 “this particular site is rocky and not subject to rapid erosion on human time scales.” Also “a major catastrophic storm event has not occurred in the past several hundred years. Pao’o used to be the site of a landing where inter-island boats would offload passengers and freight when landing at Mahukona was impossible because of weather. The landing was completely wiped out and the shoreline changed by waves generated by a tsunami in 1947.

The CDUA permit HA-1948 issued earlier on this parcel was for a much smaller residence footprint to be located 110 feet from the certified shoreline. To see that house location and the 1985 certified shoreline see Exhibit 6 here.

SIZE OF THE RESIDENCE It does not take an architect to see that the build out of the residence here will exceed the 5,000 square foot limit. I took the plans submitted with the application to a registered architect and asked for the square footage of the structures and pools and decks. The CDU application gives several different numbers for the total square footage. Presumably the most recent, that on page 3, says 4,943 square feet, just under the 5,000 square feet allowed by Chapter 13-5, Exhibit 4. Applying the rules of Exhibit 4 to just the structures identified the architect came up with a total of 7,102 square feet -- more than the allowable limit. Specifically the totals of the detached house read:

structure	applicant's figures	our figures
Living room	1,386	1,386
Parents' room	470	878
Alexa's room	483	529
Phylis's room	486	1,510
Zoe's room	489	489
storage/generator	305	1,440
pools and decks	870	870

From the drawings it appears than none of the 6 bathrooms has an indoor shower or bath. Each unit has a high walled terrace nearby. Chapter 13-5, Exhibit 4 says allowable square footage includes “floor area is all enclosed (on 3 sides minimum) with floor OR roof structure.” (my emphasis) Does Exhibit 4 exempt outdoor showers enclosed on 3 or 4 sides with a floor and drain?

From the top drawings, the walled terraces look similar to the historic ruins surrounding. From the elevations drawings the side and back walls

measure from 6 feet to 11 feet high, giving the ground observer the impression of a much larger house. Is a paved terrace surrounded on 3 sides by a high rock wall considered a structure? What is the difference to someone standing outside a 10-foot wall whether there is a house or a terrace beyond?

Then there is the curious question of whether the applicant intends to roof over large portions of the terrace. Why would their architect write under the circular open terrace "no roof structure." Why would the high-walled enclosed areas off the parents' room and Zoe's room say "open above?" Does that mean the fully-surrounded, high wall terraces off Alexa's, Phylis's and the parents' rooms will be roofed? Will the main front terrace be roofed to provide a living and dining space similar to the very prevalent house design of Africa?

To me the house is described as a five-bedroom, 6-bath residence of 7,102 square feet with more than double that of rock wall enclosed terraces - - hardly the humble abode envisioned in the writing of the CD residence code.

HOW MANY COASTAL HOUSES? The applicant wants you to think this is one of several houses strung out along our coastline. The structure at Mahukona they are calling a house is the old train depot for Kohala and is being used by a local group as a meeting place. There is only one coastal private residence between Polulu Valley and Kohala Waterfront subdivision in Kawaihae -- the former home of George Isaacs at Puakea Ranch.

SINGLE FAMILY HOUSE OR PUBLIC RESOURCE The object of the CD resource subzone is "to ensure the sustained use of the natural resources of those areas." The people of Kohala use this shoreline land as a resource and have done so continuously since first settlement. The "jeep road" is actually the old trail, later a road between Kohala and Kawaihae. Kindy Sproat remembers going on the road with his mule driver father Bill Sproat. They would stop at places like Pao'o, because as former settlements there was shade and easy access to the cooling ocean. I remember going there by Land Rover in 1969 before the coastal highway was built. There were picnic sites with log benches and campsites cleared of the pokey kiawe thorns. Some opihi and pipi'i shells were scattered about, but most were taken back to Kohala as harvest. I have continued to go there since. Favorite activities are to snorkel in the afternoon, spin cast for papi'o near sunset and have a barbecue at dusk. The circles of stone that make the firepits we use have stayed in basically the same places. Only once or twice

in countless visits have I had to pick up other peoples' trash. The most used sites are at the northern end of this property, the small beach where the house is proposed and just south of this property. When Rearden bulldozed the site by the small beach the surfers were delighted. They park their trucks and 4-wheel drives there. Rearden built a cabin without a permit near the shore. After the land board voided his CDUP the walls were torn down and the platform floor has been used as a place to watch surfers and children swimming at the beach. When surf's up the platform is crowded with folding chairs, coolers and people. A picture of it can be seen three times in the application --on p. 4 of the Cultural Impact Assessment, page 6 of the Archaeological Data Recovery and page 4 of the Archaeological Sites Preservation Plan. The surfing is so good that the place was named Secrets, because those who used it didn't want the Kona and Hilo surfers to learn about it and crowd the place. Photos of the wider public-used areas are included in Exhibit 12. The statement on page 17 of Cohen's application "The presence of a responsible family on the land will encourage preservation of archaeological features and appropriate treatment of camping and fishing areas" is offensive. We take care of the place just fine.

Rearden (Reardon, McGonigle) acknowledged the active public use of the property in his frequent calls to the police. After he had two young men arrested for vandalism when they were merely boogy boarding, the police stopped going down. In testimony before you, the Land Board, he reported how he welcomes the surfers and hikers, but complained about folks roaring up and down "his" road. One of his infractions noted by the Land Board staff was he illegally locked his illegal access road. Rearden denied locking the state access road just north. The two locks appeared at the same time. People just drove around the chained posts. Mr. Cohen's plans place his house right over the existing parking lot. His own paved parking space does not show space for public parking. The place is so loaded with ancient sites it is problematical where the public is expected to park. This is our resource. People will not stop going to Pao'o.

Please help us keep it open.

Malama ka lihikai o Kohala,

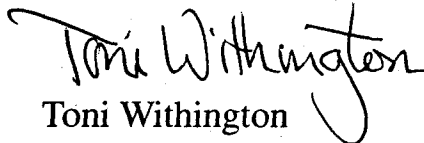

Toni Withington

EXHIBIT 1

coastal preservation activities of Toni Withington

Exhibit 1

Toni Withington, public coastal advocate

list of activities related to the Kohala coast:

Hui Lihikai - Citizens for Protection of the North Kohala Coast, steering committee,
chairman 1989-1995
North Kohala Coastline Planning Conference, organizer, co-moderator
Mayor's Advisory Committee on Shoreline Access
Mayor's Advisory Committee on Shoreline Setbacks
Project Advisory Committee, drafting procedures for CD permitting process, DLNR
Ala Kahakai, National Parks Service, trail walk crew leader
Hawaii Ocean Resources Management Plan, advisory committee member
Harbors and Marine Activity Advisory Committee, DOT & OSP
Coastal Zone Management Setup Advisory Committee
Northwest Hawaii Open Space and Community Development Plan, contributor
North Hawaii Scenic Resources Map, OSP, contributor
National Scenic Byways Review of Kohala Mountain and Coastal Roads, facilitator
Kohala Community Association, president and committee chairman
Hawi Town Conference, co-moderator
Hawaii Island Environmental Council, board member and chairman of Coastal Resources
Committee
State Policy for Marinas, OSP, contributor
Kawaihae Harbor Planning Committee, DOT, Corps of Engineers and Kawaihae Boating
Assn.
Kohala Citizens Participation Committee, Chalon, participant

EXHIBIT 2

Legislative and planning support for an open leeward Kohala coast

Passed by The Senate, Fourteenth Legislature, 1988, State of Hawaii:

Senate Concurrent Resolution (S.C.R. No. 179 H.D.1)

**URGING THE RETENTION OF VIEW AND OPEN SPACE MAKAI OF
KAWAIHAE-MAHUKONA-HAWI ROAD FROM KAWAIHAE TO UPOLU POINT, HAWAII.**

WHEREAS, lands makai of the Kawaihae-Mahukona-Hawi Road are currently in a relatively undeveloped state; and

WHEREAS, the area contains Lapakahi State Historical Park, an ancient Hawaiian coastal settlement, and Mookini Heiau State Monument, one of the most famous heiaus on the island; and

WHEREAS, the State Department of Transportation has previously recognized the value of makai views by requiring the location of all utility poles on the mauka side of the Queen Kaahumanu Highway immediately south of the Kawaihae-Mahukona-Hawi Road; and

WHEREAS, existing State zoning does not provide for urban development on the vast majority of these lands; and

WHEREAS, the makai area lies in large measure within the Coastal Zone Management area administered by the State; and

WHEREAS, the makai area also lies within the Special Management Area administered by the County; now, therefore,

BE IT RESOLVED by the Senate of the Fourteenth Legislature of the State of Hawaii, Regular Session of 1988, the House of Representatives concurring, that the State and the County governments are urged to work together in a collaborative effort to ensure that the public view and open space currently existing makai of the Kawaihae-Mahukona-Hawi Road be preserved; and

BE IT FURTHER RESOLVED that the State and County governments work in close collaboration to discourage subdivision and building development makai of the Kawaihae-Mahukona-Hawi Road; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Chairperson of the Board of Land and Natural Resources, the State Land Use Commission, the Chairperson of the Hawaii County Council, the Mayor of Hawaii County and the Director of the Hawaii County Planning Department.

MAR 13 1992

SENATE CONCURRENT RESOLUTION

PERMANENT FILE

URGING THE DEVELOPMENT OF A PLAN TO PRESERVE AN OPEN NORTH KOHALA
COASTLINE.

WHEREAS, the land makai of Akoni Pule Highway from Kawaihae to Upolu and along the northern coast of the North Kohala District on the island of Hawaii is relatively undeveloped; and

WHEREAS, the area contains Lapakahi State Historic Park, Mookini Heiau State Monument, Kamehameha's Birthsite, and other historical sites; and

WHEREAS, the State of Hawaii has no other fully unspoiled and spectacular coastline view from any highway; and

WHEREAS, public fishing, food gathering, and recreational enjoyment have continued along the North Kohala coastline relatively unhindered since ancient times; and

WHEREAS, although the Legislature of the State of Hawaii in 1988 called on the state and county governments to work together to preserve the public view and open space makai of Akoni Pule Highway and further called for collaboration to discourage subdivision and development in the area, the state and county governments have issued new development approvals; and

WHEREAS, the West Hawaii Regional Plan calls for clustering resort development in four nodes in South Kohala and North Kona to avoid the "sprawl" of resorts and resort residential developments along the rest of the West Hawaii coast; and

WHEREAS, "DECISIONS -- Action 90's", a report to Hawaii County, calls on the State and County to "quickly and clearly establish areas in the County that are never to be developed"; and

WHEREAS, almost all of the land for which protection is sought lies within the Coastal Zone Management Area administered by the State and the Special Management Area administered by the County of Hawaii; that area being defined by the land makai of Akoni Pule Highway from the district boundary near Kawaihae to

Upolu Point, including Puu Kehoni and the Special Management Area along the North Kohala coast to the district boundary in the Kohala valleys; and

WHEREAS, the ultimate economic future of West Hawaii may depend on having natural open areas; now, therefore,

BE IT RESOLVED by the Senate of the Sixteenth Legislature of the State of Hawaii, Regular Session of 1992, the House of Representatives concurring, that it urges the State of Hawaii and County of Hawaii to develop and implement a plan to protect the open nature of the North Kohala coast, preserve its valuable historic sites, and promote the non-exclusive, public enjoyment of it by residents and visitors; and

BE IT FURTHER RESOLVED that until such plan is implemented that the state and county governments discourage subdivision and building development along the designated coastline; and

BE IT FURTHER RESOLVED that the State Land Use Commission is urged to restrict development of the entire North Kohala district coast to a minimum of 500 feet from the shoreline; and

BE IT FURTHER RESOLVED that the Office of State Planning is urged to consult with, assist, and advise the County of Hawaii in developing the plan; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Chairperson of the Board of Land and Natural Resources, the State Land Use Commission, the Director of the Office of State Planning, the Chairperson of the Hawaii County Council, the Mayor of the Hawaii County, the Director of the Hawaii County Planning Department, and the Office of State Planning.

OFFERED BY:

Melanie J. Pomeroy

Herald T. Hagins
James Ahi
Dennis Nelson
Anne Kobayashi

Paul Reed
Mark Holt
Mike McIntyre
Elaine J. Suragala

MAR 17 1994

SENATE CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO
CONSIDER KOHALA COASTAL ACQUISITIONS.

1 WHEREAS, the twenty-nine miles of North Kohala coastline
2 is virtually undeveloped and yet widely used by the public for
3 ocean recreation such as fishing, diving, surfing, swimming,
4 boating, camping, and whale watching; and

5
6 WHEREAS, the lands makai of the Akoni Pule Highway from
7 Upolu Point to Kawaihae boast a wealth of historic and cultural
8 sites including Mookini Heiau State Monument, Kamehameha I
9 Birthsite, Mahukona sites of the Kohala State Monument, and the
10 Lapakahi ancient fishing village complex and State Park, as
11 well as many as yet unsurveyed pre-contact settlement sites;
12 and

13
14 WHEREAS, Senate Concurrent Resolution No. 179 (1988)
15 called on the State and Hawaii County to work in a
16 collaborative effort to ensure that the public view and open
17 space of this area be preserved, and to discourage subdivision
18 and building development makai of the highway; and

19
20 WHEREAS, the North Kohala Coastline Planning Conference
21 (1990) called for establishment of a broad Scenic and Historic
22 Heritage Area and development of an Integrated Coastal Resource
23 Management Plan for resource conservation; and

24
25 WHEREAS, state and county zoning does not provide for
26 urban development on the vast majority of these lands; and

27
28 WHEREAS, the Hawaii County General Plan and the State's
29 West Hawaii Regional Plan both call for a comprehensive effort
30 to protect valuable coastal areas for public use and enjoyment;
31 and

32
33 WHEREAS, most of the land makai of the highway lies
34 within the Coastal Zone Management Area administered by the
35 State, and the Special Management Area administered by the
36 County; and

RFS1354 SCR SMA

Post-it [®] Fax Note	7671	Date	9/17	# of pages	12
To	Mark	From	LRB Library		
Gov/Dept.	Hawaiian Adv. Tours	Co.			
Phone #		Phone #	587-0690		
Fax #	1-800-659-3544	Fax #	587-0699		

1 WHEREAS, except for the highway there is no government
2 infrastructure along most of the coastal area; and

3
4 WHEREAS, the County Department of Water Supply is
5 anticipating construction of a major water transmission line of
6 up to thirty-six inches in diameter within the next few years;
7 and

8
9 WHEREAS, zoning permits issued for resort development at
10 Mahukona provide for installation of a new power transmission
11 line along the mauka side of Akoni Pule Highway; and

12
13 WHEREAS, these infrastructure changes will undoubtedly
14 increase the value of privately owned coastal land in the area;
15 and

16
17 WHEREAS, of this entire area, the State owns much of the
18 coastal lands, large landowners control most of the rest, and
19 five small land owners control less than thirty acres; and

20
21 WHEREAS, the small parcels are mostly surrounded by
22 state land on state ahupua'a and are fronting some of the best
23 recreational areas -- a surf site, traditional fishing spots,
24 camping areas, canoe launching areas, protected bays, and
25 pebble and sand beaches; now, therefore,

26
27 BE IT RESOLVED by the Senate of the Seventeenth
28 Legislature of the State of Hawaii, Regular Session of 1994,
29 the House of Representatives concurring, that the Department of
30 Land and Natural Resources is urged to assess the recreational,
31 scenic, and historic/cultural resources of the leeward North
32 Kohala coastline for possible public acquisition prior to
33 construction of any additional infrastructure; and

34
35 BE IT FURTHER RESOLVED that the assessment include but
36 not be limited to the feasibility and propriety of:

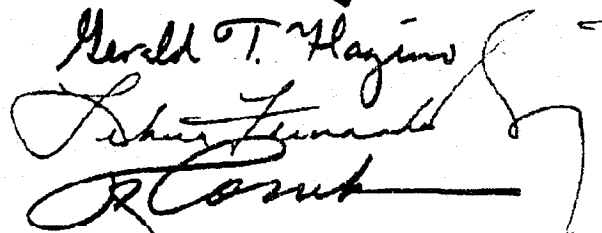
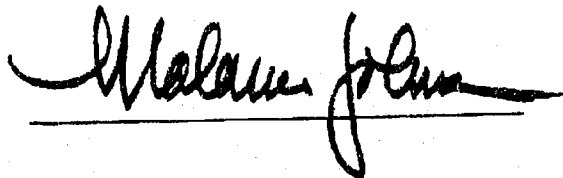
- 37
38 (1) Expanding Lapakahi State Historical Park;
39
40 (2) Surveying pre-contact settlements;
41
42 (3) Expanding the Marine Life Conservation District;

- 1 (4) Expanding the Ocean Recreational Management Area
2 to include North Kohala waters;
3
4 (5) Locating future State parks along the coast; and
5
6 (6) Establishing a Scenic and Historic Heritage area;
7 and
8

9 BE IT FURTHER RESOLVED that the Department is requested
10 to submit to the Legislature, no later than twenty days prior
11 to the convening of the 1995 Regular Session, a report of its
12 findings, recommendations, and actions taken pursuant to this
13 Concurrent Resolution; and
14

15 BE IT FURTHER RESOLVED that copies of this Concurrent
16 Resolution be transmitted to the Chairperson of the Board of
17 Land and Natural Resources, the Chairperson of the State Land
18 Use Commission, the Director of the Office of State Planning,
19 the Mayor of Hawaii County, the Chairperson of the Hawaii
20 County Council, the Chairperson of the Hawaii County Planning
21 Commission, and the Director of the Hawaii County Planning
22 Department.
23
24
25
26

OFFERED BY:



NORTH KOHALA COASTLINE PLANNING CONFERENCE

December 1, 1990: Hisaoka Gym (Kamehameha Park, North Kohala)

Sponsors: Kohala Community Association & UH Sea Grant Extension Program

MASTER STRATEGY

In concluding the conference, a master strategy evolved which would include organizing a task group made up of representatives from community leaders, community organizations, and land owners to work together to (a) consolidate key items from all master plans to date; and (b) network community organizations and land owners to support a newly integrated vision and District Development Plan.

The building block elements of action strategies for resource protection and sustainable development are as follows:

1. Integrate the Kohala Community Development Plan, Chalon's Community Participation Committee's (CPC) recommendations, the Hawi-Kapaau Urban Design Study, and the West Hawaii Regional Plan, which have been completed.
2. Work to create a broad Scenic and Historic Heritage Area for North Kohala.
3. Establish a Marine Life Conservation District (MLCD) for larger areas of coastal waters in North Kohala to protect coastal marine life, while allowing sustainable fishing.
4. Expand the State's Ocean Recreation Management Area to include North Kohala waters.
5. Develop an Integrated Coastal Resource Management Plan for resource conservation in North Kohala. This could be done as a pilot project under the Hawaii Ocean Resources Management Plan.
6. Create a special area designation at the State level, such as "Scenic Heritage" and/or "Historic" to ensure access, historic and scenic area preservation, and allow for site-specific restrictions on development for the North Kohala Coastal area.
7. Identify key North Kohala sites and resources and submit them for new State Park designations.

- * 3.5 North Kohala Coastal Park - The undeveloped 16-mile stretch of coastal lands from just north of Kawaihae Harbor to Puakea Ranch are lands of exceptional beauty, history, and recreational value. It is recommended that the County and the community work with appropriate state agencies to develop a phased park planning, acquisition, and implementation program for these lands, similar in scope to the State's large-scale park plans for the coastal sector from Keahole Airport to Hapuna Beach State Park. (see section 3.3.21 for details)
- * 3.6 Scenic Roadway Corridors - Consider designating as "Open" ("O") a visual buffer strip 300 feet wide on both sides of the right-of-way of the major scenic roads in the Region: Queen Kaahumanu Highway, Mamalahoa Highway, Akoni Pule Highway, Kawaihae Road, and Kohala Mountain Road. The purpose of this buffer strip or setback area is to help to preserve scenic views from the arterial roadways in the Region. This buffer strip provision will not apply to existing developments, already zoned projects, facilities needed for the health and safety of residents, or to smaller properties where the owner can demonstrate that a full application of the setback would create a substantial hardship. The 300-foot visual buffer strip should be kept in natural landscape, except for Resort Node areas, where landscaping and entry features may be placed within the buffer strip. (see section 2.4.7 and 3.3.24 for details)
- * 3.7 Open Grasslands - The less productive pasturelands and open grasslands of the Region, designated on the Plan as "Open Space Dominant" (OSD), are currently zoned A-40a, A-20a, and U ("Unplanned"). These lands are an important element in the overall expansive open spaces of the Region, and should therefore generally not be rezoned to a smaller lot size except in the case of "agricultural cluster" plans that propose to cluster lots and houses on smaller lots on a portion of the site, but with a total unit count equal to the maximum unit count that would be allowed under present zoning. Proposals for higher density zoning should include buffer areas and natural open spaces that will substantially preserve the open character of the site. (see section 3.3.25 for details)
- * 3.8 Project-Specific Open Space Plans - The County Planning Department should require for all development projects of 15 or more acres that the owner develop as part of his master plan a project-specific Open Space Plan that addresses in detail the issues of open space preservation, maintaining important viewsheds and viewplanes, and mitigation of adverse visual impacts. The project-specific Open Space Plan should be prepared and submitted as part of the owner's General Plan Amendment request, change of Zone request, use permit, special permit, special management area permit, or subdivision plan, as appropriate. (see section 2.4.8 for details)

EXHIBIT 3

**Resolution calling on State acquisition of coastal lands including Pao'o
parcel**

S.R. No. 116

S.R. NO. 85

THE SENATE
SEVENTEENTH LEGISLATURE, 1994
STATE OF HAWAII

MAR 17 1994

SENATE RESOLUTION

REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO
CONSIDER KOHALA COASTAL ACQUISITIONS.

1 WHEREAS, the twenty-nine miles of North Kohala coastline
2 is virtually undeveloped and yet widely used by the public for
3 ocean recreation such as fishing, diving, surfing, swimming,
4 boating, camping, and whale watching; and
5

6 WHEREAS, the lands makai of the Akoni Pule Highway from
7 Upolu Point to Kawaihae boast a wealth of historic and cultural
8 sites including Mookini Heiau State Monument, Kamehameha I
9 Birthsite, Mahukona sites of the Kohala State Monument, and the
10 Lapakahi ancient fishing village complex and State Park, as
11 well as many as yet unsurveyed pre-contact settlement sites;
12 and
13

14 WHEREAS, Senate Concurrent Resolution No. 179 (1988)
15 called on the State and Hawaii County to work in a
16 collaborative effort to ensure that the public view and open
17 space of this area be preserved, and to discourage subdivision
18 and building development makai of the highway; and
19

20 WHEREAS, the North Kohala Coastline Planning Conference
21 (1990) called for establishment of a broad Scenic and Historic
22 Heritage Area and development of an Integrated Coastal Resource
23 Management Plan for resource conservation; and
24

25 WHEREAS, state and county zoning does not provide for
26 urban development on the vast majority of these lands; and
27

28 WHEREAS, the Hawaii County General Plan and the State's
29 West Hawaii Regional Plan both call for a comprehensive effort
30 to protect valuable coastal areas for public use and enjoyment;
31 and
32

33 WHEREAS, most of the land makai of the highway lies
34 within the Coastal Zone Management Area administered by the
35 State, and the Special Management Area administered by the
36 County; and

Page 2

S.R. NO. 85

1 WHEREAS, except for the highway there is no government
2 infrastructure along most of the coastal area; and
3

4 WHEREAS, the County Department of Water Supply is
5 anticipating construction of a major water transmission line of
6 up to thirty-six inches in diameter within the next few years;
7 and
8

9 WHEREAS, zoning permits issued for resort development at
10 Mahukona provide for installation of a new power transmission
11 line along the mauka side of Akoni Pule Highway; and
12

13 WHEREAS, these infrastructure changes will undoubtedly
14 increase the value of privately owned coastal land in the area;
15 and
16

17 WHEREAS, of this entire area, the State owns much of the
18 coastal lands, large landowners control most of the rest, and
19 five small land owners control less than thirty acres; and
20

21 WHEREAS, the small parcels are mostly surrounded by
22 state land on state ahupua'a and are fronting some of the best
23 recreational areas -- a surf site, traditional fishing spots,
24 camping areas, canoe launching areas, protected bays, and
25 pebble and sand beaches; now, therefore,
26

27 BE IT RESOLVED by the Senate of the Seventeenth
28 Legislature of the State of Hawaii, Regular Session of 1994,
29 that the Department of Land and Natural Resources is urged to
30 assess the recreational, scenic, and historic/cultural
31 resources of the leeward North Kohala coastline for possible
32 public acquisition prior to construction of any additional
33 infrastructure; and
34

35 BE IT FURTHER RESOLVED that the assessment include but
36 not be limited to the feasibility and propriety of;
37

- 38 (1) Expanding Lapakahi State Historical Park;
39
40 (2) Surveying pre-contact settlements;
41
42 (3) Expanding the Marine Life Conservation District;

Page 3

S.R. NO. 85

- 1 (4) Expanding the Ocean Recreational Management Area
2 to include North Kohala waters;
3
4 (5) Locating future State parks along the coast; and
5
6 (6) Establishing a Scenic and Historic Heritage area;
7 and
8

9 BE IT FURTHER RESOLVED that the Department is requested
10 to submit to the Legislature, no later than twenty days prior
11 to the convening of the 1995 Regular Session, a report of its
12 findings, recommendations, and actions taken pursuant to this
13 Resolution; and
14

15 BE IT FURTHER RESOLVED that copies of this Resolution be
16 transmitted to the Chairperson of the Board of Land and Natural
17 Resources, the Chairperson of the State Land Use Commission,
18 the Director of the Office of State Planning, the Mayor of
19 Hawaii County, the Chairperson of the Hawaii County Council,
20 the Chairperson of the Hawaii County Planning Commission, and
21 the Director of the Hawaii County Planning Department.
22
23
24
25







OFFERED BY:

Malama
John F. ...
Herald T. Hagino
B. Kofune
Eloise Y. Tungpalan
Maui George
...
...

EXHIBIT 4

Land ownership of the Kohala leeward coast

North Kohala Leeward Coast

-  Parker Ranch
-  Bishop Estate
-  private owners formerly Finance Factos
-  Small Coastal Parcels
-  State Lands
-  Chalon International

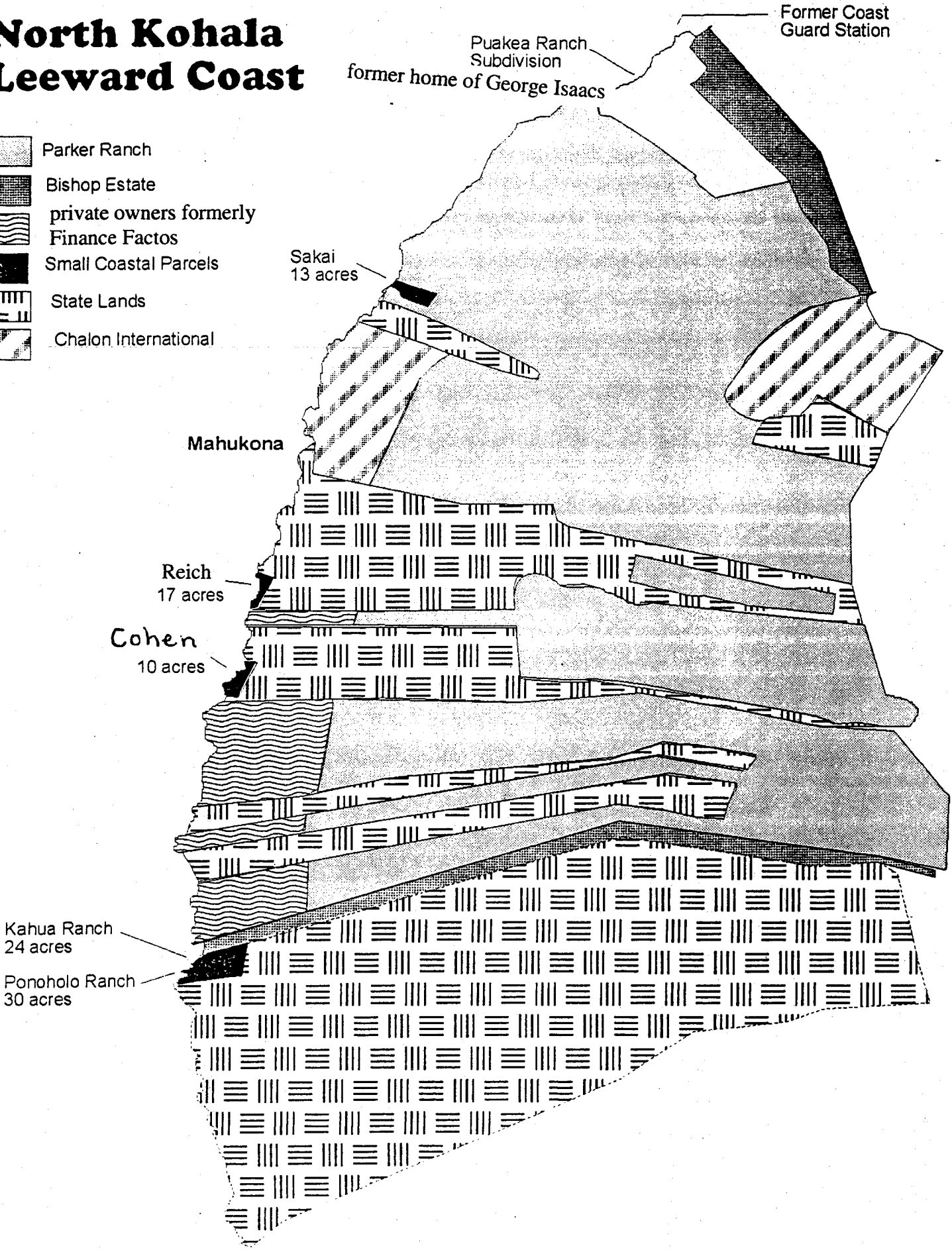
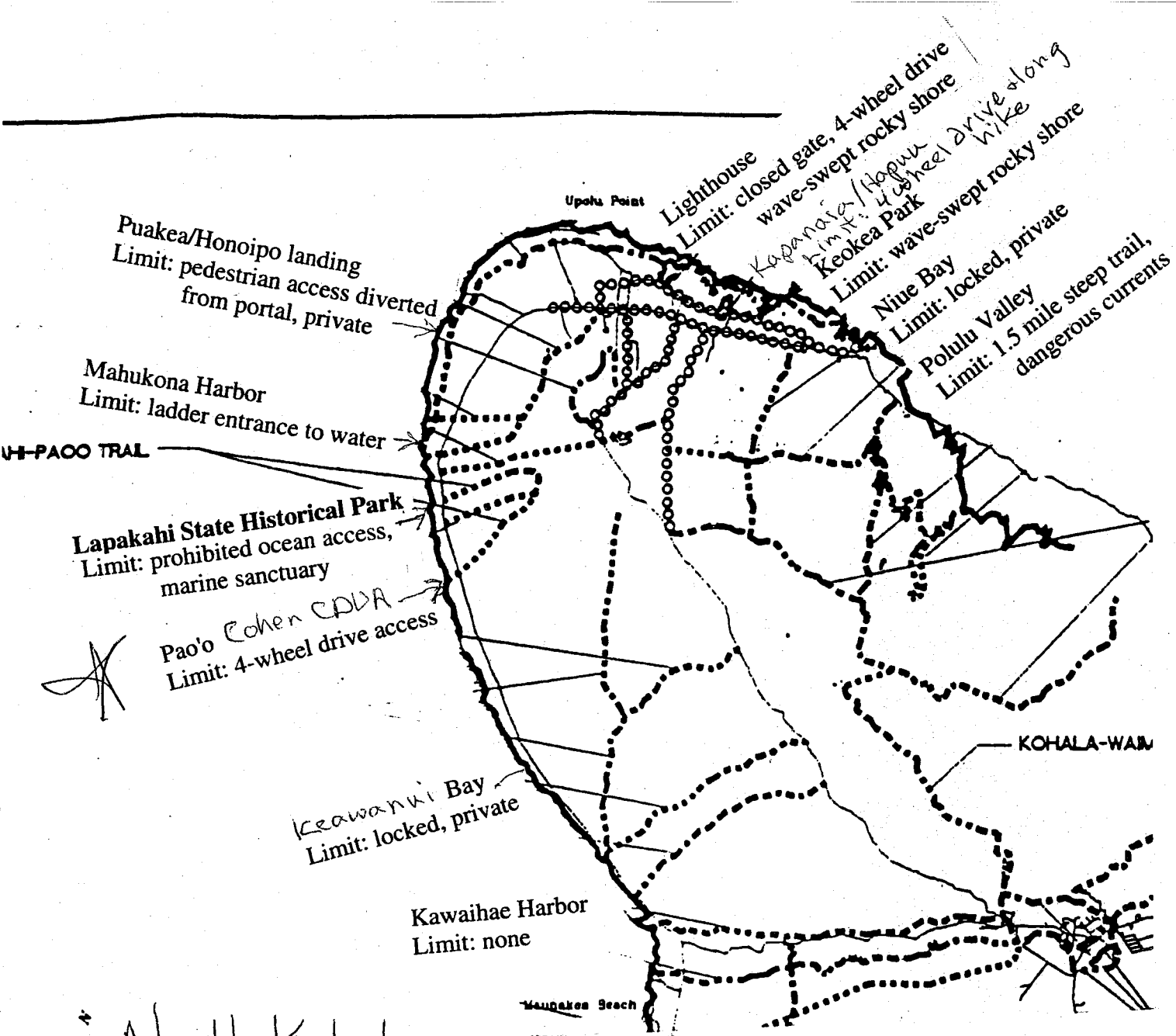


EXHIBIT 5

Map showing North Kohala's portals to the sea and their accessibility



North Kohala
portals to
the ocean

TRAILS MAP
Northwest Hawaii Open Space
and Community Development Plan
For: County of Hawaii
Planning Department
By: Townscape, Inc.
Honolulu, Hawaii
November 1992

EXHIBIT 6

long term recreational activities at Pao'o parcel

fishing, camping and picnic site
parking area, fire ring, logs and rocks for
seating, sometimes swept of kiawe thorns
Uses: fishing, shell and limu picking,
picnicking, camping, hiking rest stop

beach area

large parking area, wooden platform, rock and coral beach, branches for hanging towels and lanterns, sometimes swept of kiawe thorns
Uses: swimming

Uses: swimming, snorkeling, surfing (seasonal), fishing, shell and limu picking, picnicking, camping, hiking rest stop

NORTH
PACIFIC

OCE:4N

PAOO 2-6

COLLEGE

NOT TO SCALE

~~SECRET~~
SHORTLINE LOCATION
ALONG GRAVE - 1970 - 14000
P300 2-6 NORTH KN

fishing, camping and picnic site
parking area, fire ring, logs and rocks for
seating, sometimes swept of kiawe thorns
Uses: fishing, shell and limu picking,
picnicking, camping, hiking rest stop

EXHIBIT 7

**3 articles from Environment Hawaii regarding the Land Board and
CDUP of Rearden 1993-1995**

Speculation? So It Would Seem: The Case of the Rearden Permit

The Board of Land and Natural Resources has long been aware of the often incalculable value that a Conservation District Use Permit adds to land in this district of supposedly restricted activity. To discourage speculation, it tries always to make certain that the party applying for a permit is going to build only for his own use—that is, the applicant has no intention to sell the property once the permit is obtained.

In the case of a permit granted in 1987 to one Michael Rearden, however, the Board seems to have played an unwitting role in increasing the value of the land. From the \$285,000 purchase price paid by Rearden in 1985, by 1991, Rearden had accepted an offer of \$2.8 million for the parcel.

An Uninformed Board

In June 1993, the Board of Land and Natural Resources, still in the dark about the way in which the Conservation District permit had been used to leverage the value of the land, approved a two-year time extension (until March 30, 1995) for completion of work related to Permit HA-1948, first granted to Michael Rearden in 1987. The ostensible purpose of the permit is to allow Rearden to build a 3900-square-foot house on a parcel along the North Kohala coast, just south of Lapakahi State Park.

The extension was the fourth for Rearden (who is also known as Roark McGonigle, Charles McGonigle, and Michael Reardon). Under the initial permit, construction of the house was to have been completed by February 1990. A year later, the deadline was extended to August 13, 1991 (first extension, attributed to "processing time constraints involved in acquiring a state access easement")—and in June of 1991, Rearden was given another extension of time to complete work, this time to September 30, 1991 (second extension, due ostensibly to a complicated divorce). In November 1991, the Board approved extending the completion deadline to March 30, 1993 (third extension—the result of a "glitch" in divorce proceedings, Rearden told the Board).

In February 1993, with no end of construction in sight (or beginning, for that matter) Rearden requested another time extension, noting that his legal entanglements had kept him occupied until just the month previous.

The request drew criticism from Citizens

for Protection of the North Kohala Coastline. In a letter from the group's steering committee chairman, Toni Withington, dated March 30, 1993, CPNKC requested that the extension be denied. "Too much time has passed since approval of the permit," Withington wrote. "The applicants have changed and progress on the project appears no further along than it was in 1988."

Withington cited also concerns about lateral shoreline access along the Ala Kahakai, the ancient Hawaiian coastal trail; inconsistencies in the county and state files with respect to the property; and how the proposed development conflicts with more recent efforts to protect open space along the Kohala coast.

"I asked the OCEA planner assigned to the case if he knew the size of the lien. He did not. Nor had he asked the Reardens. I walked down the hall and paid \$1 to the Bureau of Conveyances to get copies of the ... court-ordered lien."

The staff report to the Board at its June 25, 1993, meeting included as an exhibit what was described as a "response" to CPNKC's concerns—which, in fact, verified virtually every point raised by Withington.

In the submittal recapping the permit history, the staff reported: "The applicant has been unable to commence work on the subject home due to an encumbrance imposed by the Court." Now, however, the litigation that had held things up was completed, and, staff informed the Land Board, "Presently [June 1993], the Reardens are free to develop the subject property subject to payment of the lien (undisclosed amount) to the John and Josephine Selak 1981 Revocable Trust."

No Curiosity

Therein hangs a tale, although one that has escaped the attention of the OCEA staff to date. The staff report was the first occasion Withington had seen mention of any encumbrance on the property. Given past Board concerns about the use of permits as a means of

speculators enhancing the value of land they had no intention of developing, Withington asked staff what the amount of the encumbrance was. In a letter to Board Chairman Keith Ahue dated August 30, 1993, Withington wrote: "We did not learn that the shoreline property was subject to a lien until we read the staff report at the June 25 meeting. At that meeting we expressed concern about the possible speculative nature of the CDUA and the applicants' ability to build a home for their family's use. I asked the OCEA planner assigned to the case if he knew the size of the lien. He did not. Nor had he asked the Reardens. I walked down the hall and paid \$1 to the Bureau of Conveyances to get copies of the ... court-ordered lien against the subject property." The lien is the result of a judgment against Rearden made in a California court in 1987 and on record at the Hawai'i Bureau of Conveyances since 1989.

"Please note that the enclosed judgment in the sum of \$577,151 is attached to the land... According to the Tax Office the 10 acres of land was sold by Signal Hawai'i, Inc., to a company owned by Rearden in 1985 for \$290,000.

"If the Board has a stated goal of discouraging speculation on Conservation District land, would not the information about the existence of a lien on the land more than two times the original sale price elicit questions by Board members to Mr. Rearden about his ability to build a home for his family, as stated in the application?"

Whose Lot Is It Anyway?

For years, Rearden had battled in court efforts to file the lien against the North Kohala property. Court records give rise to a number of additional questions about Rearden's motives in filing for the Conservation District permit and about other representations he made to the Land Board and Office of Conservation and Environmental Affairs.

Rearden's main defense against efforts to lodge the lien was that it wasn't his property at all, but belonged rather to a trust—the Foundation Epsil, based in Vaduz, Liechtenstein—that he had set up for his son's benefit. (That foundation is now the owner of record for the parcel.)

The lien itself is based on a judgment rendered against Rearden in a California civil case. (At the heart of that lawsuit were the actions of Rearden—who at the time was using the name Roark McGonigle—in managing a trust fund established by the grandpar-

See "Rearden", page 8

Rearden from page 7

ents of his then-wife. A court determined that McGonigle/Rearden had diverted several hundred thousand dollars of the trust's resources to his personal profit.)

For several years, the trust was unable to track down McGonigle, who had assumed the name Michael Reardon or Rearden on his arrival in Hawai'i. When the trust learned that he might have substantial assets in Hawai'i — that is, the 10-acre shoreline parcel — it began court action to have the lien imposed and, following litigation that spanned several years and a number of separate court cases, finally prevailed in February of this year.

An Unauthorized Agent?

If the land belonged to the Foundation Epsil, one would not have known it from the statements Rearden had been making all along to the DLNR. The original application for the Conservation District Use Permit indicated the land was owned by J & J SRT, a company wholly owned by Rearden. When Rearden failed to file annual corporate reports, J & J SRT was involuntarily dissolved by the Department of Commerce and Consumer Affairs. After that, Rearden represented in his dealings with the DLNR that he was the owner.

To Judge Shunichi Kimura, of the Circuit Court of the Third Circuit in Hilo, Rearden had a different account of his relation to the land. Not only did he not own the property, he told the court, he had no authority to act in any way on the foundation's behalf.

In testimony taken July 25, 1991, Judge Kimura asked the foundation's attorney, James Sogi, what legal basis there was for believing Rearden was the foundation's agent. Sogi responded: "I've seen the letters and the correspondence with the Planning Department [actually, the DLNR] in which he [Rearden] has purported to take actions on behalf of the property which is owned by the foundation. But I am unaware that there is any authority, specific authority granted to him by the foundation to do that... And I'm not familiar with any document or specific authority granted to Mr. Rearden by the foundation that would authorize him to take these actions other than as an unauthorized apparent agent."

Legal Strangers

Kimura then quizzed Rearden along these same lines, noting that in a memo to the court,

Rearden had indicated that he was "an absolute stranger to ... Foundation Epsil. You have nothing to do with it. You're not the agent. You have no authority to accept service or do anything, and you have no more right to that than I or any other stranger to that. Is that your research and understanding?"

Rearden: "Yes, it is, your Honor."

Kimura: "What is your response ... that you have dealt with that land as if it was your own in dealing with government agencies? What is your response to that?"

At this point, Rearden explained that since he had set up the trust, he understood he could continue to make additional deposits into it. "And," he went on, "I construed that to mean also that if I enhanced an asset that the trust had by putting money into that, that that would also be an acceptable provision of the original trust."

"If the subject property were to lose its permits for access and to build, and those permits could not be renewed, the owners of the property would sustain losses of approximately Three Million Dollars based on today's real estate market," a real estate broker told the court.

"So, basically, all I was doing was enhancing property that was owned by the trust. And I felt that that was a further benefit of — of — you know, even though it was a service rather than money, that that would be something that was provided for under the original trust agreement."

Kimura asked whether, in "enhancing the value of the property," Rearden "made representations in the application [to the DLNR] that you had the authority to act for the Foundation?"

Rearden: "I — I never — never made any such representation... I did not ever make that representation to them."

Kimura: "And you wrote to them simply as a person who wanted to enhance the value of the Foundation Epsil's property."

Rearden: "To — to build a residence on that property, your Honor, which I've always considered to be somewhat distinct. And I always make a — a — I was always in the process of making an application to construct a residence... It was always my representation to

them that I was asking for a permit to build the residence."

Kimura: "And, normally, the person who asks for a permit to build a residence must be the person with legal authority to affect the property that you're seeking the permit for. Every government agency has that as a foundational requirement that either you or you're the agent for someone [who owns the property]. Did you make any such representation to these governmental agencies in seeking the permit to build..."

Rearden: "Your Honor, I would have to look back through every document in that case to know if I did..."

'Very Careful Strategy'

Rearden's original application to the DLNR, as stated earlier, showed the owner to be J & J SRT. To establish the relation between the corporation and the foundation, Rearden produced for the court a copy of a letter purportedly written May 1, 1985, from Charles McGonigle (another name he uses) to Fedes Fiduciare, a bank in Lausanne, Switzerland that, Rearden/McGonigle claims, was managing the foundation he had established for his son. The property discussed in the letter is not described, but presumably is the 10-acre parcel purchased from Signal Oil Co. in 1985.

"It is my very strong belief that the property we discussed can be developed with a substantial effort and very careful strategy," McGonigle wrote. "In that event, the property will take on a very substantial increase in value for the trust. I am willing to take on the responsibility for the actual work with the understanding that you will cover the expenses."

"It is my understand [sic] that I would take title to the property as your nominee and hold it in trust until the permits are accomplished at which time I will transfer the property back to the trust without consideration."

"I would like to make one change, however in that I would like my corporation to take title as your agent rather than taking it in my name personally." Rearden did not provide the court with a copy of a response to the letter, if any.

Payoff?

The "careful strategy" appears to have worked, according to the affidavit, provided to the court by Rearden, of Stephen Hurwitz, a Kamuela real estate agent. In his affidavit, dated July 17, 1991, Hurwitz stated he could attest to the approximate current market value of the North Kohala land. In considering the

See "Rearden", page 9

Rearden from page 8

value, he noted:

"... 3. The subject property is zoned Conservation/Agriculture and is covered with extensive remains of early Hawaiian historic sites.

"4. A permit has been obtained from the Department of Land and Natural Resources for a single family residence, and an easement has been approved by the Land Management Board [sic] for access across state property, for access to the subject property.

"5. It is my belief that obtaining permits in Conservation areas is becoming more difficult with the passing of time. In any event, more difficult than permits applied for in 1985. It is also my belief that properties with multiple historic Hawaiian sites are becoming increasingly more sensitive in regard to development.

"6. On information and belief the existing permits and easement expire in September of 1991, if construction is not under way by that time.

"7. The value of the property without the ability to obtain a permit and the easement would be virtually worthless.

"8. Based on my information and belief, if the subject property were to lose [sic] its permits for access and to build, and those permits could not be renewed, the owners of the property would sustain losses of approximately Three Million Dollars based on today's real estate market."

Less than two weeks later, on August 2, 1991, Hurwitz's company, C & H Properties, Inc., had found a buyer for the land: Paul Mickelsen, who was offering \$2.8 million, "less only customary closing costs and C & H Properties, Inc.'s five percent commission."

At the Land Board meeting of November 22, 1991, Rearden begged the Board's indulgence in getting an 18-month extension of the deadline for completing the house. No mention was made to the Board of the Mickelson offer. Instead, Rearden told the Board he needed six months to get "legal clearance" and another year to get the construction finished.

From mid-1991 through most of 1992, negotiations involving Rearden and the California trust seeking a lien on the property continued, since one of the terms of the Deposit Receipt Offer and Acceptance of August 2, 1991, was that the property be free of all liens and encumbrances.

The initial \$2.8 million offer expired in April 1992, although in June of 1992 it was replaced by

a DROA for \$2.4 million. Once again, the parties could not come to an agreement to settle the judgment against Rearden and the offer expired.

In February 1993, the litigation was brought to a close with a stipulated judgment, allowing the California trust to maintain its lien against the property and specifying that the agent for Foundation Epsil in matters pertaining to the North Kohala property henceforth would be Janice Williams-Rearden, Rearden's present wife.

And Besides...

The potential speculative aspect of Rearden's use of the Conservation District permit was just one — albeit perhaps the most complex — that Citizens for Protection of the North Kohala Coastline brought to the Board's attention last June. Other issues were:

Access: "In a letter to the Board on September 10, 1991, Rearden said he had obtained an easement" for access to his property across state land. "However," Withington continued, "according to the Land Management Division the easement has not been finalized. One condition of the access easement as proposed by Land Management is that there be no gates on state land. There is a locked pipe gate on the access road above the Rearden property on state land." The Division of Land Management had actually prepared an agreement giving Rearden the required access in 1988; Rearden refused to accept it at the time.

Building permits: "Rearden told the Board in his September 1991 letter that he has 'completed and obtained approval for his building plans.' The county Building Department has no application for permits on this property."

Water supply: "The CDU permit does not mention the need for proof of water supply, but a building permit would require this. No county water commitment has been issued for this property and it is unlikely that the applicant could get one, as there is no county water available in this area."

Land Board Sidesteps CDUA Extension Issue

As the Rearden case illustrates, public participation in the granting of time extensions can provide an opportunity for the Land Board to be apprised of issues that its staff has been unable or unwilling to investigate.

Yet Roger Evans, administrator of the Office of Conservation and Environmental Affairs,

recently proposed to the Board that it delegate authority to grant time extensions to the chairman. (This was discussed in the September issue of *Environment Hawai'i*.)

At its September 10 meeting in Honolulu, the Board of Land and Natural Resources took up Evans' recommendation. Evans' request was first placed on a Board agenda for its previous meeting on Maui, but the matter was deferred, given concerns of the public of insufficient time to comment on the submittal.

Testimony in opposition to the recommendation was submitted by a variety of environmental organizations. Marjorie Ziegler, a member of the recently appointed Conservation District Project Advisory Committee, told the Board that the proposal "was quite unexpected," with no advance notice given to that panel.

Approval of the recommendation, Ziegler wrote, "would limit opportunities for public participation and appeal.... There are good reasons for placing time limits on CDUPs. Conditions on the land, public values, management objectives, and laws change over time. Deliberation by the Board gives everyone — the Board, applicant, and public — an opportunity to consider those changes and the appropriateness of any given CDUP time extension... Allowing the chairperson to grant or deny requests creates an appearance of impropriety, even if none exists, because decision-making occurs 'behind closed doors.'"

Perhaps the most damning testimony came from Toni Withington, a member of the Advisory Committee and also steering committee chairman of Citizens for Protection of the North Kohala Coastline. Using the example of that group's comments on the request for a time extension made by Rearden, Withington pointed out how staff investigations of permittee actions tend to be cursory, relying solely on information supplied by the permittee.

"To us," Withington wrote, "the OCEA staff has not shown the ability to carry out the rudimentary investigations needed to protect the public's rights in the issuance of administrative time extensions. Therefore, it is up to public interest groups and neighbors to stay alert to possibilities of land speculation in the Conservation District. Your agenda is one of the few ways the public has of knowing what is going on in the DLNR. To remove these notices is to put decision-making back in the closet."

"Don't lock us out."

The Board did not act on the recommendation, but referred it to the Advisory Committee. At the committee's next meeting, however, no mention was made of the matter.

Court Considers Renewed Claim Against Holder of Kohala CDUA

On November 22, 1991, Michael Rearden appeared before the Board of Land and Natural Resources at its meeting in Honolulu. The Board voted, without discussion, to approve the recommendation of its staff that Rearden be granted a 12-month extension to his permit to build a house along the Big Island's North Kohala coast, near Lapakahi State Park.

The extension was the third Rearden had been granted since the permit was awarded in 1987. Immediately after the perfunctory Board vote, Rearden, who had informed the Board by letter that the extensions were needed because of protracted litigation involving his ex-wife, approached the Board. He thanked Board members for their just-granted approval, then added: "I'd like to bring you up on a couple of developments in this case."

"One, the Circuit Court did dismiss the last action with prejudice... And at the same time she [his ex-wife] has now brought another action in Circuit Court which will require that we file motions to dismiss. And at the same time we're going to ask the court to prohibit any further actions from this person, because they have been shown to be frivolous [and] without court approval."

"But this again is going to take some time... And our thinking" — Rearden quite frequently refers to himself in the first-person plural — "is that from the time we are actually free and clear to be able to start to obtain the loan, financing for the construction, to actually do the construction and complete it, will actually take a year...."

"So, I'm going to see if I can ask you to give us six months to get all of the legal entanglements cleared up. And, again, I think it has to be obvious at this point that these are harassment techniques that are being used."

"And then give us the year for obtaining the financing and completing the construction, which would be a total of a year and six months."

'I Was Very Truthful'

Christopher Yuen, Board member from the Big Island, was open to the request, but wanted to add to Rearden's permit two now-standard conditions that had not been included in standard permit language at the time Rearden's permit was first granted. The

first one binds the permittee to carrying out any environmental mitigation measures discussed and agreed to in meetings with the Land Board, whether or not those mitigation measures are spelled out in the permit.

The second condition, as explained by Yuen to Rearden, provides that if any of the statements or representations made by Rearden to the Land Board are false, "then the permit becomes null and void."

Rearden responded: "Obviously, I was very truthful in my applications, so I'm not concerned about that." But, he added, he was worried that Board policy toward single-family houses in the Conservation District had changed so that such uses would no longer be

"I just feel like I've been admonished that this could be the last extension that we'll be granted, and I'm just concerned about that — that this being the last opportunity, you know — the property's not going to be worth a great deal without the ability to build something on it."

allowed. "I just feel like I've been admonished that this could be the last extension that we'll be granted, and I'm just concerned about that — that this being the last opportunity, you know — the property's not going to be worth a great deal without the ability to build something on it."

He went on to suggest that the Board add the new conditions only if he was not able to complete his work within 12 months: "Why don't we use that as an incentive for everybody to get going — that it [the permit] is unchanged if we do it within a year, but if we need the extra six months, then we add those things."

New Conditions

Yuen, however, made a motion to extend the permit to March 22, 1993 — 18 months — "but that two additional conditions — one on environmental mitigation and the other on truthful representation — shall be added."

Rearden indicated puzzlement, prompt-

ing another explanation of the new conditions by Yuen. Of the second condition, regarding truthful representation, Yuen told Rearden it made the permit contingent on everything Rearden had told the Board being true — "like, ... if it turns out you're still happily married and your wife never did any of those things, then we're going to be very unhappy and your permit becomes null and void."

Rearden: "So, with anything through the whole permitting process? Not just the original application?"

Yuen: "That's right."

Rearden (laughing): "Well, that might take some looking at."

After still further reassurances by Land Board members to Rearden — that the truthful-representation condition related only to "significant" matters — the Board voted on Yuen's motion. It passed unanimously. On December 13, 1991, then-Board Chairman William Paty officially notified Rearden of the approval of the 18-month time extension, subject to the following condition, among others:

"That in issuing this time extension, the Department and Board has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings."

Gaps in the Record

As described in the October 1993 issue of *Environment Hawai'i*, Rearden did not notify the Land Board of a number of developments that, on their face, would seem to have a bearing on Land Board deliberations.

Those developments include Rearden's efforts to sell the property. At the time of the November 22, 1991, meeting, an offer to purchase the 10.6-acre lot for \$2.8 million was pending approval of the Third Circuit Court and parties seeking damages against Rearden in civil litigation. As tapes of the November 22 meeting indicate, Rearden represented to the Board that it was his intention to complete construction of a house on the land within the 18-month duration of the time extension.

Further evidence of Rearden's intention to sell rather than build may be seen in an

See "Conservation", page 9

Conservation from page 8:

affidavit he filed, in yet another lawsuit, barely four months after the November 1991 Board meeting. The plaintiff in that suit, Rearden stated, "is seeking to sabotage a bonafide sale [of the Kohala property] to a purchaser for value that will provide the funds to clear all judgments against defendant."

Frivolous?

Then there is Rearden's characterization of his ex-wife's "frivolous" suit against him. While a lawsuit against him by his ex-wife, Stacy Steffens, was dismissed with prejudice in September 1991, the basis of the dismissal was Steffens' failure to appear at a court hearing. In 1992, Steffens prevailed on a motion for reinstatement of the same lawsuit, which claims the Kohala property was used by Rearden as security in an unrecorded agreement between Steffens and Rearden. That agreement, signed by Rearden on April 30, 1990, provides for Rearden to pay Steffens \$1 million, in return for which Steffens would drop all pending lawsuits against him.

More than a year after reinstatement of this suit, Rearden has still not notified the Board.

The Big One

Nor did Rearden detail to the Board another series of lawsuits that culminated in the Third Circuit Court upholding a lien against the property for \$577,000 plus interest at 10 percent a year, accumulating since 1987.

As reported in our October edition, those suits trace back to Rearden's management of a trust established by his former wife's grandparents. The trust sued Rearden (then known as Roark McGonigle) and a California court in 1987 issued the \$577,000 judgment against him. When the trust caught up with Rearden (who assumed his new name upon leaving California), it sought to place a lien against the Kohala property — which, at the time Rearden applied for the Conservation District permit, he indicated was held by a corporation of which he was sole owner.

In defending himself against the trust, however, Rearden indicated that he was *not* the owner of the parcel. To Judge Shunichi Kimura, in fact, Rearden assented to the description of himself as a "legal stranger" to the land's then owner, the Foundation Epsil, a trust fund Rearden established for his son — to which title to the property was registered on

September 2, 1987. (The warranty deed is actually dated 25 months earlier, on July 28, 1985, but it was not forwarded to the Bureau of Conveyances until the September 1987 date. Perhaps coincidentally, Rearden had been served with divorce papers just 13 days earlier.)

The protracted litigation ended in February of this year. The outcome left the Kohala property saddled with a lien for the total amount of principal and interest (at 10 percent per year) from the California judgment. While the file for Rearden's Conservation District Use Permit does contain a copy of the stipulated judgment — provided by the DLNR's land agent in Hilo — that document contains no indication of the dollar amount of the California judgment against Rearden. Rearden has informed the OCEA staff that the lien may force him to sell the property, but, as of press time, he had not informed OCEA of the actual amount of the lien.

Rearden Permit Lapses Without Action

In 1987, Michael Rearden obtained a Conservation District permit for a single-family
See "Conservation", page 11

Conservation from page 10

residence to be built along the coast of North Kohala. Although Rearden obtained no fewer than four time extensions, he still had not begun construction when the deadline for completing work on the house occurred on June 25, 1995. (For details on the Rearden case, readers are invited to turn to the lengthy reports on this subject in the October and November 1993 issues of *Environment Hawai'i*, as well as shorter articles in the May and August 1994 issues.)

(Technically, Rearden is not the permit holder; the permit has been placed in the name of several parties, most recently that of his wife, Janice Williams-Rearden, who is trustee of a family trust that, according to Rearden, names his son as beneficiary. In any event, Rearden has always been closely involved with both the land and the permit, and it is neither wrong nor misleading to refer to the permit as his.)

Apart from the extraordinary number of time extensions granted on this permit, it is noteworthy in another respect: Rearden's is the first permit to be challenged in a formal petition for a declaratory ruling from the Land Board finding the permit to be null and void. That petition was brought in April 1994 by Hui Lihikai (Citizens for Protection of the North Kohala Coast), at a time when the permit still had more than a year of life remaining.

On June 9, 1995—or, in other words, 16 days before the permit would expire of its own force—the Office of Conservation and Environmental Affairs brought to the Land Board the matter of Hui Lihikai's petition. Practically every one of the points raised in the petition was confirmed independently by OCEA staff. The staff's recommendation to the board was to grant the requested finding of the petitioners and declare the permit null and void.

In the end, the Land Board voted unanimously to accept a three-part motion made by Board Member Chris Yuen: first, that the board defer action on the petition for the time being; second, that it authorize OCEA staff to notify Rearden, the first working day after his permit expired, that his permit was "null and void because the permit conditions have not been complied with," and third, that any work that Rearden might undertake between June 9 and June 25 not be considered by the board in his favor should he seek a fifth time extension.

Accusations

Rearden was present at the June 9 board meeting. For reasons not clear, Board Chair-

man Michael Wilson allowed Rearden to remain for nearly an hour, during which time Rearden accused the citizens' group of slander and announced he would be taking them to court, and denounced the OCEA staff for "conspiring" with Hui Lihikai against him.

In addition, Rearden sought to have Board Member Yuen disqualified from participating in any decision on his permit, alleging that Yuen harbored — perhaps subconsciously — ill will toward him as a result of Rearden's failure to live up to a contractual agreement with Yuen more than a decade ago (while Yuen was a deputy corporation counsel for Hawai'i County). After an executive session in which Rearden's request was taken up with Deputy Attorney General Linn Nishioka, the board decided Yuen met the legal test of having no conflict, in that he has no financial interest in any aspect of Rearden's activities. Yuen himself then told the audience that he would go ahead and disqualify himself voluntarily if he had "some intractable bias for or against a particular party which I do not have in this case."

'Stings'

In a long and at times rambling testimony Rearden disclosed that he had set up what he described as "stings" to entrap members of Hui Lihikai and OCEA staff into making damaging statements. He brought with him tapes of telephone conversations he had secretly taped — tapes that, he claimed, would give irrefutable proof of DLNR staff "communicating with this group ... giving them insider information." "This was a little sting operation we set up ourselves," Rearden said referring to himself (as he is wont to do) in the first-person plural. The "insider information," it turns out, was simply notice of when the group's petition for a declaratory ruling was tentatively scheduled to come before the board for a decision.

The damning evidence collected (in another secretly tape-recorded conversation) against members of Hui Lihikai amounted to a statement by one of the members that she was opposed to development of any kind along one of the most historically significant sections of coast in the islands. In this "little operation," Rearden told the board, he had arranged for a friend to call the group's office and speak as though he wasn't "tremendously intelligent and wasn't quite up on these issues." One of Hui Lihikai's members indicated the group would help the caller prepare testimony and said further that Rearden "had committed several violations on the property" — a statement that, in light of the OCEA staff's report, would appear to be a reasonable conclusion.

EXHIBIT 8

**Land Use Boundary interpretation showing CD boundary following
coastal jeep road**

AGRICULTURAL

CONSERVATION

A/C BOUNDARY LINE
FOLLOWS THE
JEEP TRAIL

Boundary interpretation signed by
Esther Ueda, Executive Officer, Land
Use Commission, Jan. 14, 1987.

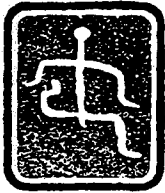
CDUA no. HA-8/26/86-1948
APPLICANT Michael Readon, President
AGENT J. & J. S. R. T., Inc.

ZONE ☐ PROTECTIVE
☒ RESOURCE
☐ LIMITED

Exhibit E

EXHIBIT 9

Na Ala Hele letter on status of access ownership



NA ALA HELE
Hawaii Trail & Access System

January 9, 2006

Ref: H04:18 Pao'o 6

TO: Kimberly Tiger Mills, OCCL Planner
FROM: Doris Moana Rowland, Abstractor *DMR*
THROUGH: Curt Cottrell, Program Manager *CC*
SUBJECT: Cohen Single-Family Dwelling CDUP Draft EA
Pao'o, North Kohala, Tax Map Key: 5-7-1-5

RECEIVED
OFFICE OF CONSERVATION
2006 JAN 20 12:12 PM
HAWAII

The Office of Conservation and Coastal Lands has requested comments on a Draft EA submitted by the applicant Jonathan Cohen. Cohen is the owner of a 16-acre parcel originally sold in 1856 in Land Grant No. 1997 to Kauwe. Situate in the ahupuaa of Pao'o 6 in the district of North Kohala, this land was part of an extensive coastal settlement with fishing villages along the coast and agricultural systems in the uplands.

Examination of map data and other historical documents NAH has found evidence of a mauka-makai trail and an ancient lateral coastal trail that crosses a portion of the subject property (Exhibit A). This is believed to be a segment of the coastal trail that ran from Mahukona to Kawaihae and is sometimes referred to on maps as the "Ala Loa."

A Based on the map and historical document data, it has been determined the coastal trail alignment is owned by the State of Hawaii through its Board of Land and Natural Resources pursuant to §264-1(b) Hawaii Revised Statutes. Furthermore, due to its coastal location, this trail section may be considered a potential alignment by the National Park Service for the Ala Kahakai National Historic Trail designated by Congress on November 13, 2000.

The mauka-makai trail has evolved into an easement for access and utility purposes from the Kawaihae-Mahukona Road to the subject property. The Board of Land and Natural Resources granted this easement that passes over government land to Cohen in 2003.

It is recommended that a modern metes and bounds survey of the coastal trail be completed and all adjoining landowners and affected agencies be notified of any future management plans of this ancient trail.

c: Irving Kawashima, NAH
Melanie Chinen, HP
Aric Arakaki, NPS
Gregory Mooers

EXHIBIT A

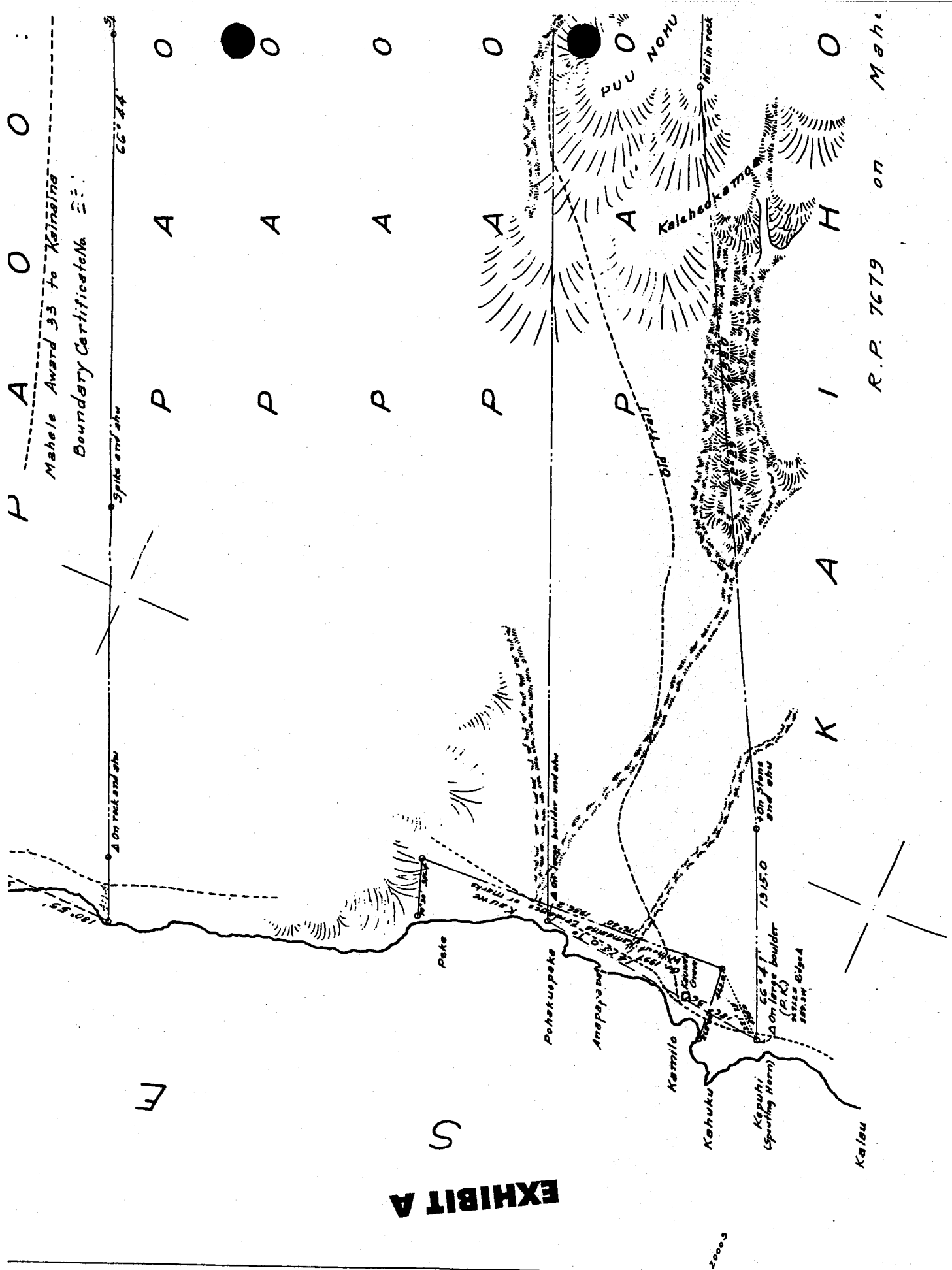


EXHIBIT 10

**Land Division letter determining need for EA and archaeological review
of the Pao'o access road**

BENJAMIN J. CAYETANO
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. BOX 621
HONOLULU, HAWAII 96809

AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND DIVISION
STATE PARKS
WATER RESOURCE MANAGEMENT

Edward J. Rapoza
Maryl Realty
P.O. Box 390100
Kailua-Kona, HI 96739

JUL 13 1995

Dear Mr. Rapoza:

SUBJECT: Access Easement to Tax Map Key 3rd/5-7-01:05, Paoo, North Kohala, Hawaii and an Archaeological Study

This letter is in response to your July 8, 1996 letter to Michael D. Wilson requesting information regarding the above captioned private parcel.

Our records show that an access easement request was being processed in 1988 but the applicant never paid the required fees. Consequently, the access easement across State of Hawaii land, TMK 5-7-01:21, to the private parcel was never issued.

Now, in order to acquire an access easement to the subject parcel, a new Conservation District Use Application must be approved by the Board of Land and Natural Resources (Board). The previous permit was declared "null and void" by the Board at its June 22, 1995 meeting. (See attached copy of letter to Ms. Janice Williams-Rearden, dated July 14, 1995.) With a Conservation District Use Permit, the applicant may apply for an access easement across State land from the Department of Land and Natural Resources. An Environmental Assessment is required, pursuant to Chapter 343, Hawaii Revised Statutes.

The archaeological survey you cited is incomplete in our files and does not include a map. You may wish to obtain a copy of this survey from other sources. The survey is titled:

ARCHAEOLOGICAL SURFACE SURVEY AND SUBSURFACE
TESTING OF COASTAL LANDS IN PAO'O
KOHALA, HAWAII ISLAND

by
Hallett H. Hammatt, PhD.
William H. Folk, B.A.

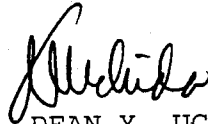
Prepared by
ARCHAEOLOGICAL RESEARCH CENTER HAWAII, INC.
for
SIGNAL PROPERTIES
March 1980
Lawa'i
14-178 II

2nd page
Exhibit 10

Mr. Edward J Rapoza
Page 2

If you have any questions, please contact Al Jodar of the Land Division at 587-0424.

Very truly yours,



DEAN Y. UCHIDA
Administrator

Attachment

cc: Hawaii District Land Office
Hawaii Land Board Member
✓ Sam Lemmo

I:\NETDATA\OAHU\AL\LTR\RAPOZA.RLT

EXHIBIT 11

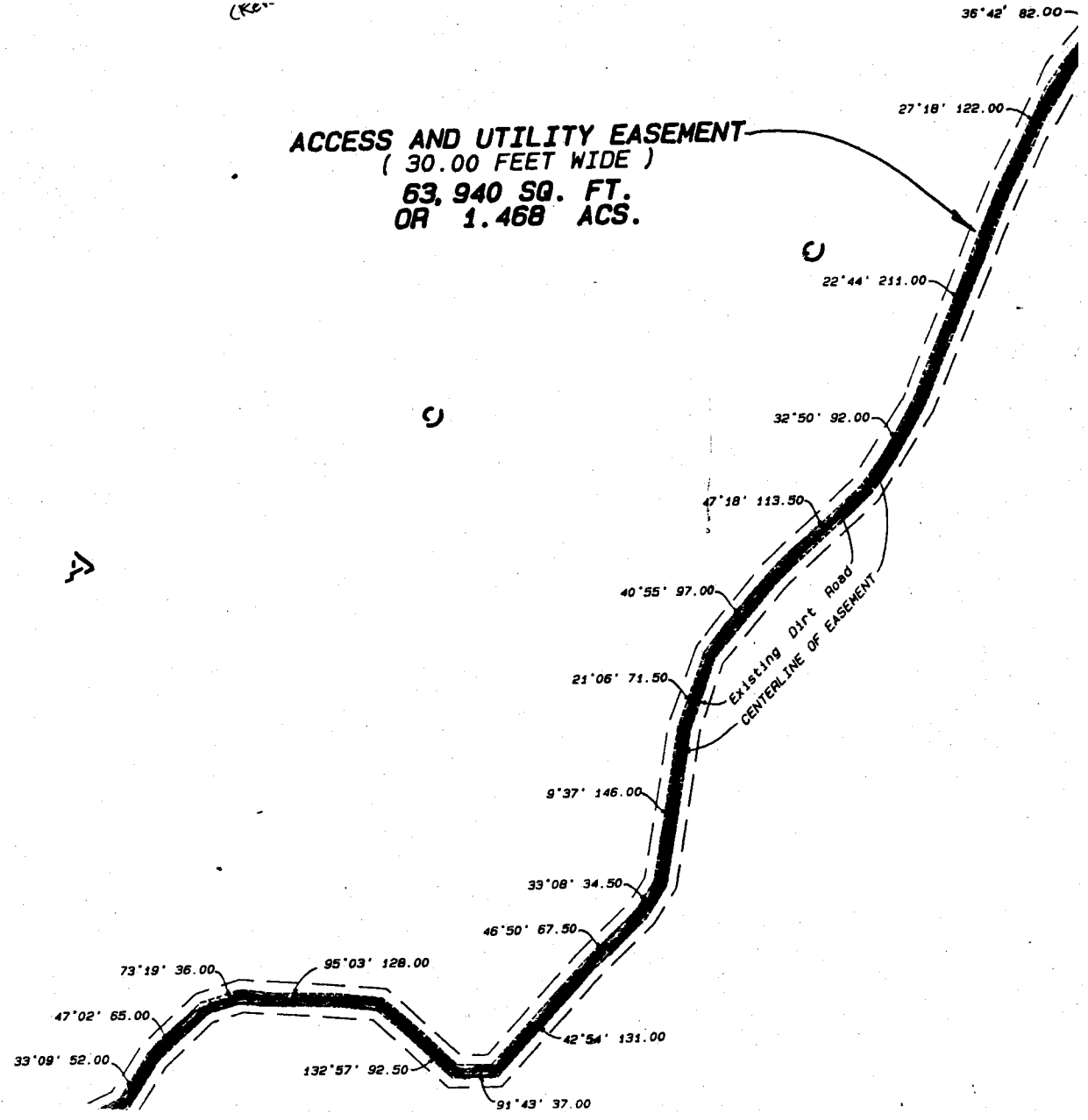
1988 survey of Pao'o parcel access easement ordered by Rearden

Project

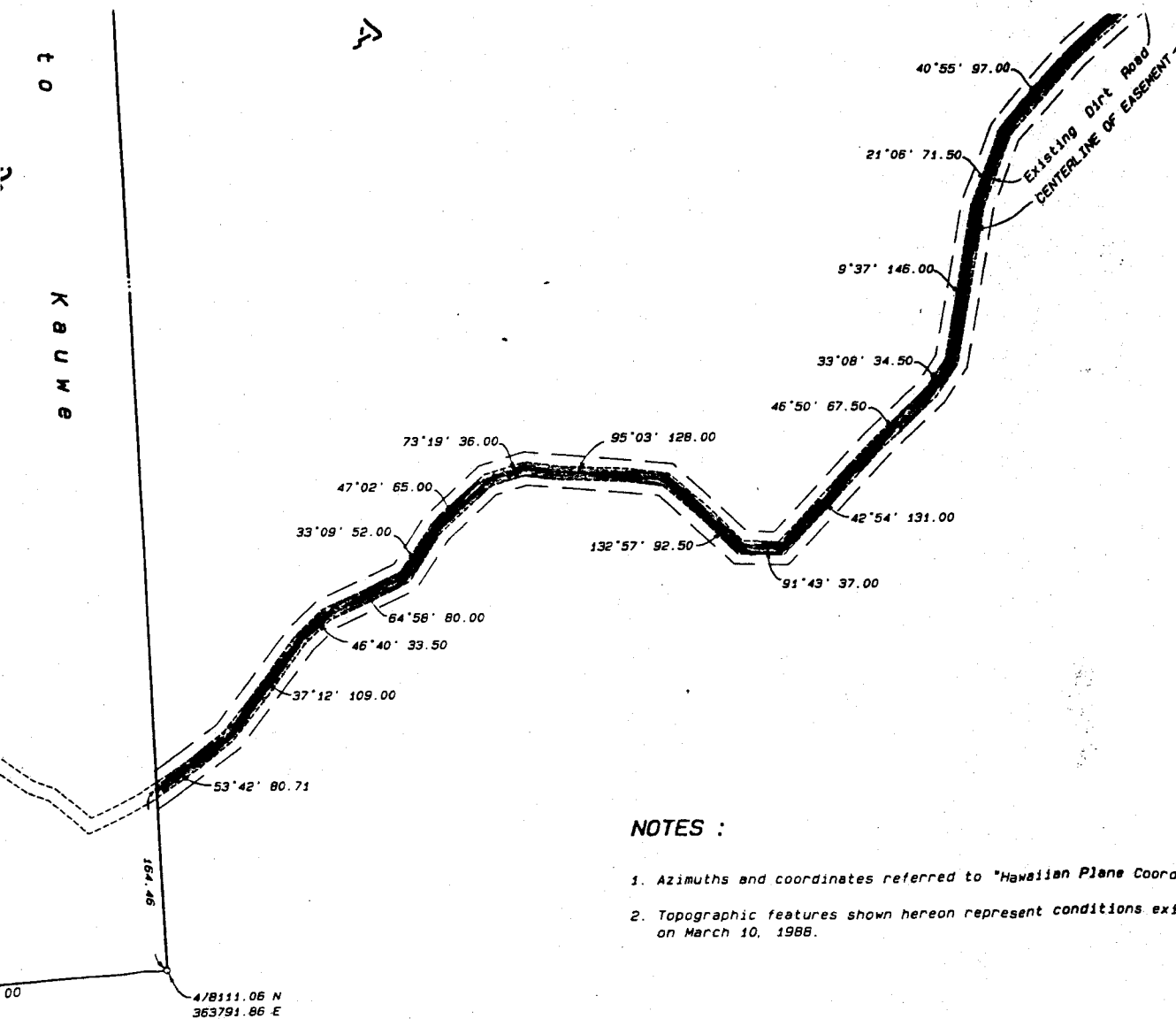
ent
1997
to
Kauwe

356'47'10.0"-1956.20

ACCESS AND UTILITY EASEMENT
(30.00 FEET WIDE)
63,940 SQ. FT.
OR 1.468 ACS.



to
Kauwe

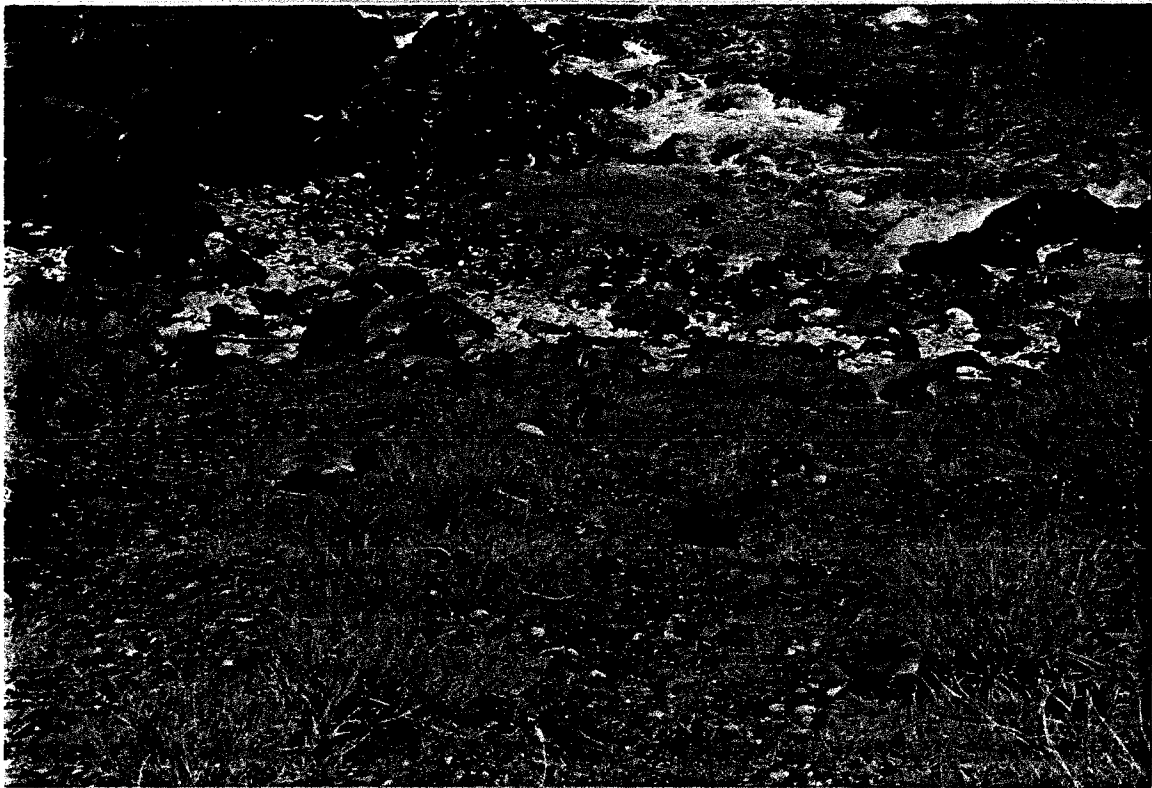


NOTES :

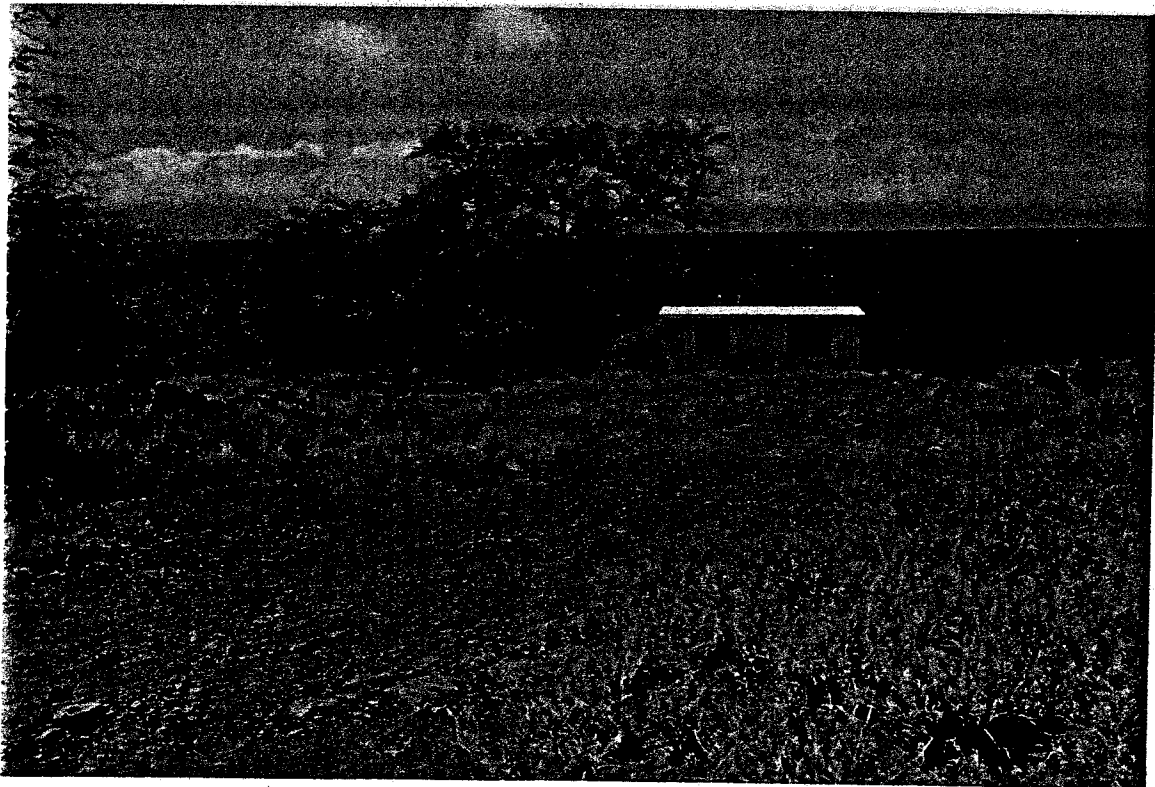
1. Azimuths and coordinates referred to "Hawaiian Plane Coordinate Grid System" (Zone :
2. Topographic features shown hereon represent conditions existing on March 10, 1988.

EXHIBIT 12

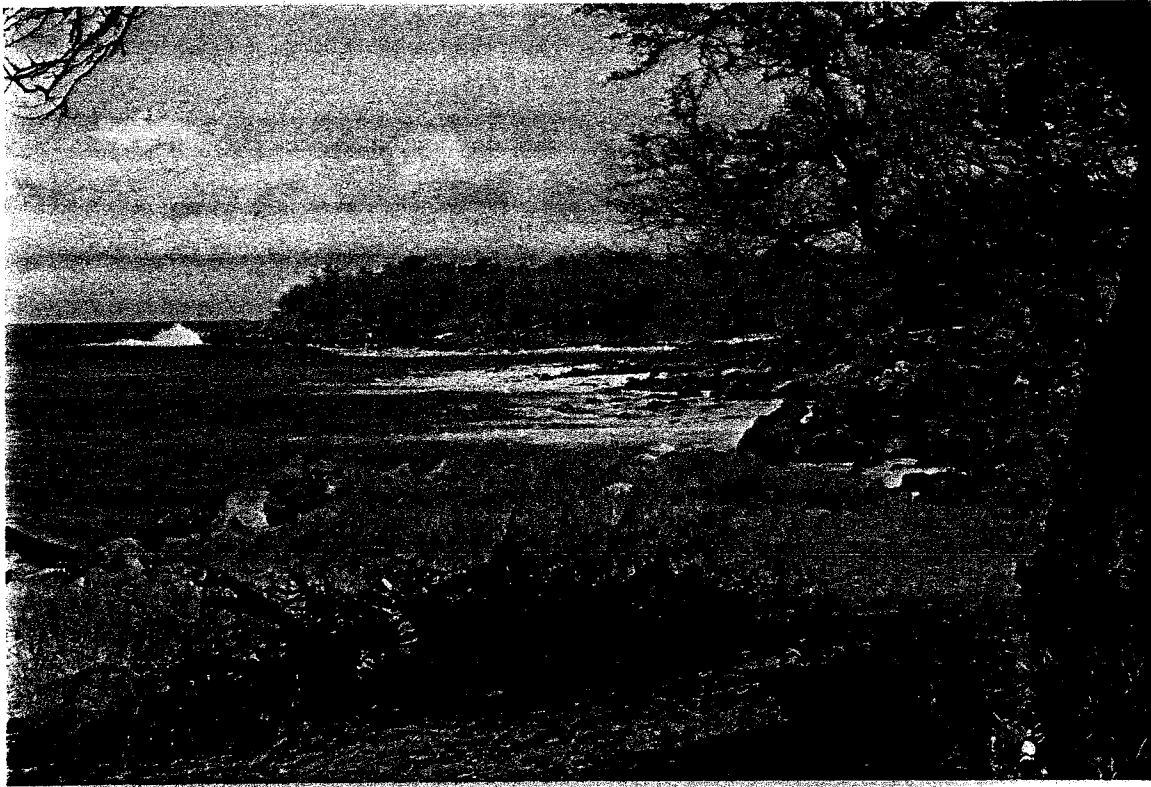
photos of recreational sites on and near Pao'o



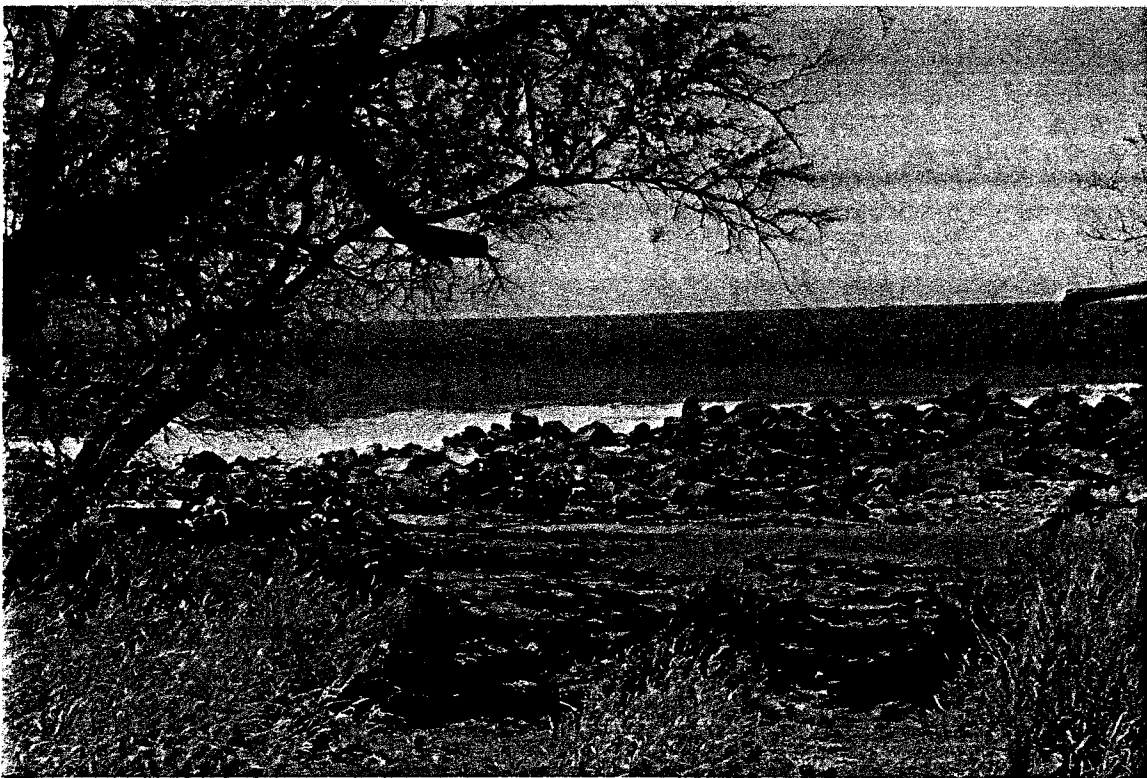
the beach at Pao'o



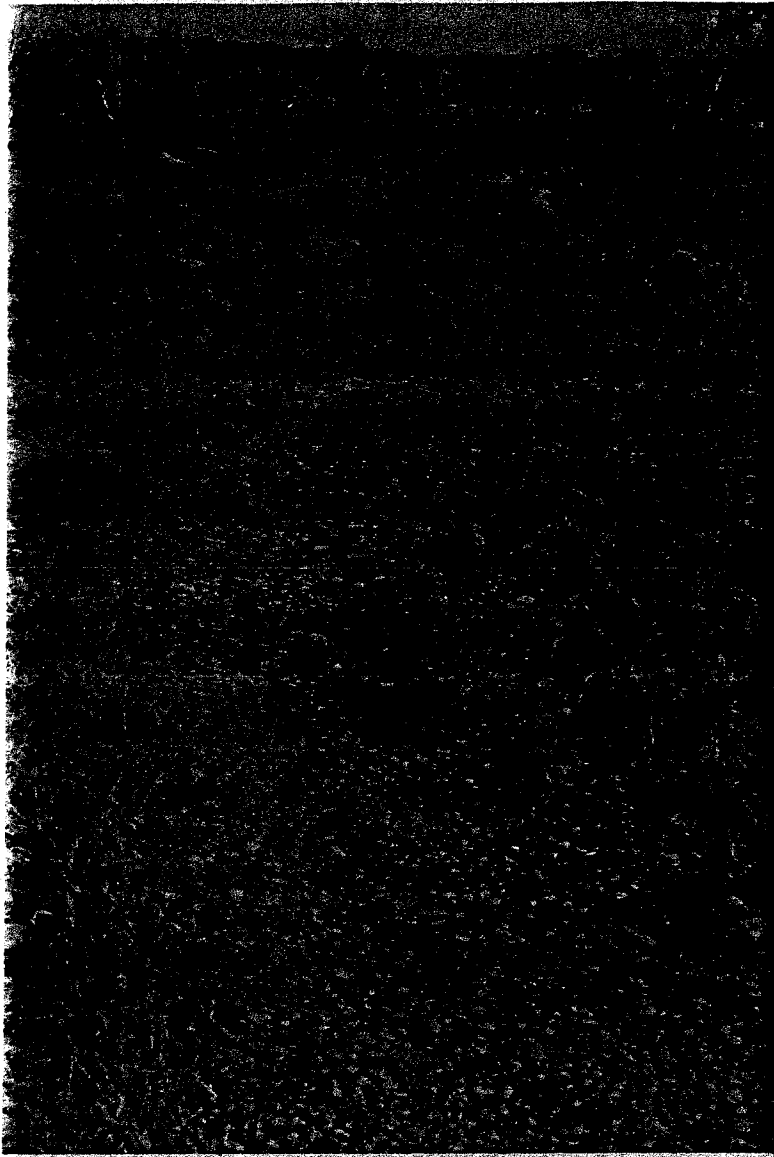
bulldozed house site and Reardon's
cabin



campsite at north end of Cohen's property. Note firewood cleared and stacked

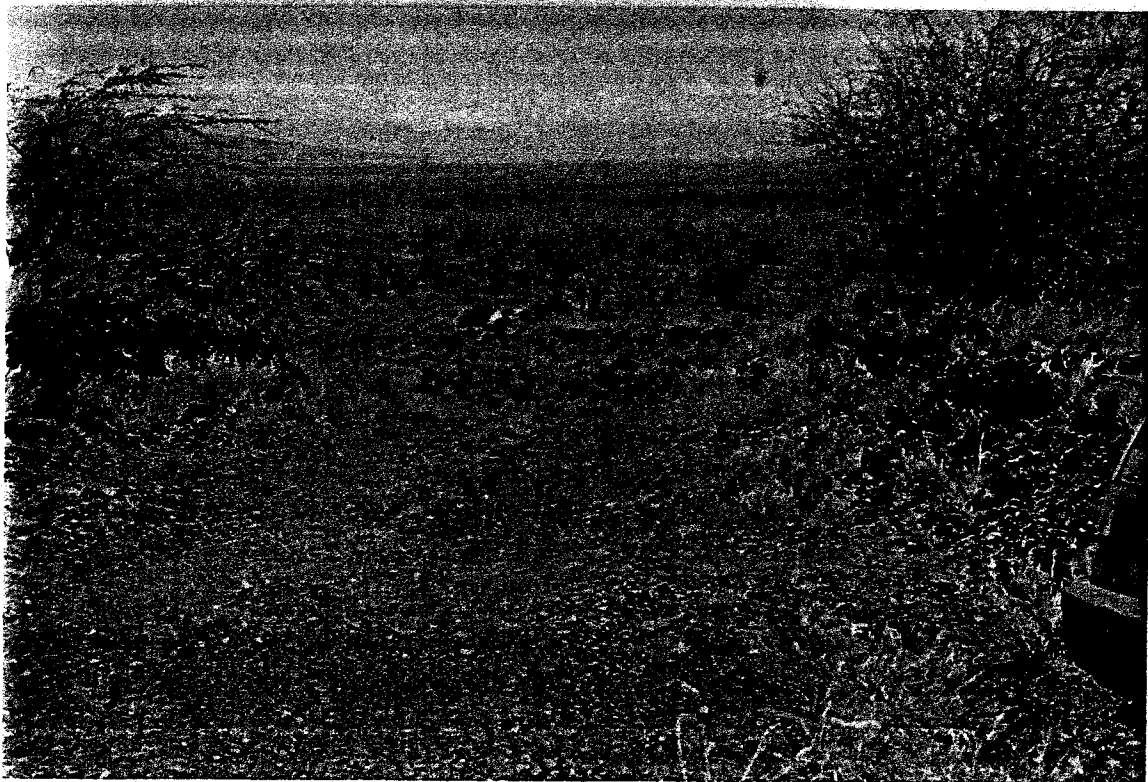


campsite just south of Cohen's property line. note fire ring and cleared area.



lateral
State-owned
jeep road
Pao'o

roadway easement
bulldozed by
Reardon without
permit



Preserving the Kohala Coast *Malama Kohala Kahakai*

April 14, 2006

Department of Land and Natural Resources
Office of Conservation and Coastal Lands
P.O. Box 621
Honolulu, Hawaii 96809

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2006 APR 17 A 11:21
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

RE: Denial of Application for Conservation District Use Permit for TMK:(3) 5-
Applicant: Jonathan Cohen, c/o Aloha Properties LLC
18 Baker Bridge Road, Lincoln, MA

Dear Members of the Board for the Department of Land and Natural Resources:

Please find enclosed many more examples of the long-standing community support for preserving the Kohala Coast in open space. These petitions, government resolutions, letters, and plans are summarized below.

For decades, four of Kohala's most beloved kupuna and community leaders have worked to preserve the Kohala Coastline in open space. Their names and signatures are on many of the documents, petitions, and letters summarized below. These kupuna are:

- Marie Solomon
- William Akau
- Armstrong Yamamoto
- Clyde Sproat

In **2001, SENATE CONCURRENT RESOLUTION 146, S.D. 1**, passed both houses of the State Legislature, urging the retention and preservation of open space and view planes, historic sites, and traditional access along the coastline of the North Kohala District and again called for collaboration to discourage subdivision and building development

In **2001, CHAIRPERSON of the STATE BOARD OF LAND AND NATURAL RESOURCES, Mr. Gilbert Coloma-Agaran**, testified before the State Senate Committee of Water, Land, Energy and Environment, in support of SR 146 and pledged DLNR's support to coordinate with the residents of Kohala and County of Hawaii. His testimony also recognized the importance of the numerous natural, scenic, historic and cultural resources abounding in Kohala and its coast.

In **2001, the ASSOCIATION OF HAWAIIAN CIVIC CLUBS** (representatives of all Civic Clubs) passed a resolution urging the Hawaii County Council to redesignate the North Kohala Coastline to Conservation/Open. The resolution recognized a long history of community support for preserving the Kohala Coast and that the North Kohala coastline is historically and culturally very important to all people of Hawaii, but particularly to Native Hawaiians

In **2001** and then again in **2002, the KOHALA COMMUNITY REPRESENTED BY REVERED KUPUNA** and community members signed and sent a letter to the County documenting Kohala's 30+ years of work to protect the Kohala Coast. This letter recognized that people from all over the Island (Ka'au, Hilo, Puna, Hamakua, Kona) still come to Kohala with their families to fish and camp.

In **2002, the KOHALA HISTORIC AND PRESERVATION COMMITTEE** submitted a petition with **more than 1,000 signatures** requesting the County protect and preserve the Kohala Coastline

In 2002, the **COUNTY OF HAWAII PLANNING COMMISSION** with the agreement of the **HAWAII COUNTY PLANNING DIRECTOR** recognized the significance of the feeling of open space that is so important to North Kohala and incorporated SR 146 into the Hawaii County General Plan

In 2000, the **KOHALA HISTORIC AND PRESERVATION COMMITTEE** collected well over six hundred signatures from Kohala residents and submitted them as part of a community response to the update of the Hawaii County Comprehensive Plan, urging the preservation and protection of the region from Kawaihae to Pololu Valley

In 1992, **THE NORTHWEST HAWAII OPEN SPACE AND COMMUNITY DEVELOPMENT PLAN**, calls for a comprehensive effort to protect valuable coastal areas as open space for public use and enjoyment

In 1990, the **HAWAII STATE DEMOCRATIC PARTY** and the **HAWAII COUNTY DEMOCRATIC PARTY** both adopted resolutions at their conventions calling for the State and County to develop and implement a plan to protect the open nature of the coast, preserve its valuable historic sites and promote nonexclusive enjoyment of it by residents and visitor alike."

In 1990, **LOCAL RESIDENTS PRODUCED A VIDEO FEATURING CLYDE SPROAT AND WILLIAM AKAU** (revered kupuna) documenting the community's desire to protect the Kohala Coast

In 1990, **DECISION – ACTION 90's**, a report to Hawaii County, calls on the State and County to "quickly and clearly establish areas in the County that are never to be developed" and cites Kohala as an example where development should be discouraged

In 1989, the **HAWAII COUNTY COUNCIL PLANNING COMMITTEE** passed a resolution calling for protection of the coastline from development and calling for a survey of the coast. The resolution was passed unanimously

In 1989, the **WEST HAWAII REGIONAL PLAN** says the State and County have already over-committed West Hawaii in resort and resort-residential development and shows no resort-residential development in North Kohala. The plan identifies the cliffs and valleys of Kohala Mountain and the panoramic coastal views from Kohala Mountain as highest on its list of "important scenic heritage resources"

In 1988, **SENATE CONCURRENT RESOLUTION 179** passed both houses of the State Legislature and called on governments to work together to ensure public view and open space along the coast and to discourage development makai of Akoni Pule Highway

In 1988, **DLNR** commissioned the study "**NORTH KOHALA: PERCEPTIONS OF A CHANGING COMMUNITY**", which indicated the intent of past state administrations and DLNR staff to preserve and protect the North Kohala Coast

In 1983, **THE NORTH KOHALA COMMUNITY DEVELOPMENT PLAN**, adopted by resolution by the County Planning Commission, which implements the General Plan for the North Kohala District, recommended for OPEN classification the entire length of the North Kohala Coast

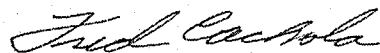
In 1972, the **DLNR** study entitled "**NORTH KOHALA, PRESERVATION OF HISTORICAL RESOURCES**" indicated the intent of past state administrations and DLNR staff to preserve and protect the North Kohala Coast

Additionally, you will find many, many important community organizations have continually offered


their support to preserve the North Kohala Coast and have signed and supported the above petitions and letters and resolutions. These organizations include:

- Kohala Kupuna Council
- Kohala Filipina Association
- Kohala Hawaiian Civic Club
- Kohala Puerto Rican Club
- Kohala Historic and Preservation Group

Thank you,



Fred Cachola



Gail Byrne

Contact Information for Malama Kohala Kahakai

Fred Cachola and Gail Byrne

68-3551 Awamoa Pl, Hawaii 96738

Fred: 808-685-4293 or Gail: 808-883-8268

FredCachola@aol.com gailbyrne@hawaii.rr.com

Harry Kim
Mayor



Dixie Kaetsu
Managing Director

Barbara Kossow
Deputy Managing Director

**HAWAI'I COUNTY PUBLIC ACCESS, OPEN
SPACE AND NATURAL RESOURCES
PRESERVATION COMMISSION**

C/O 101 Aupuni Street, Suite 325, Hilo, Hawaii 96720
Phone: 961-8304 Ext. 106; Fax: 961-8622

April 5, 2006

Honorable Harry Kim
Mayor, County of Hawai'i
25 Aupuni Street
Hilo, Hawai'i 96720


Dear Mayor Kim:

It has been six months since the Commissioners for the Public Access, Open Space and Natural Resources Preservation Commission were appointed and given their duties and responsibilities. Ordinance No. 05-166, Section 2-217, required the commission to develop and submit to the Mayor an initial island-wide prioritized list of qualifying lands worthy of preservation within six months of being confirmed to the commission by the Council. Your commissioners took the deadline date seriously and are submitting the prioritized list on time, April 5, 2006.

Since this was a new County commission, the rules of practice and procedure for the commission were developed, along with procedures for receiving public input, evaluating the information received and developing the prioritized list. The time to do all of this was short and the commissioners relied on the assistance of Amy Self, Deputy Corporation Counsel, and Cathy Minor, Commission Secretary.

The attached report describes the process that was used in developing the prioritized list. If there are any questions or clarification needed, please contact Amy Self or Cathy Minor at 961-8251.

Sincerely,


John Replogle, Chair

JPR:cm

Sboards&comm public access:ltr mayor 4-5-06 JPRcm.doc

Hawai'i County is an Equal Opportunity Provider and Employer

Commissioners: Kenneth Kaneshiro; Laura Schuster; Ruth Walker; Benedict Yung;
Paul Campbell; John Replogle; Jocelyn Garavoy; Hannah Springer; E. Kalani Flores

EXHIBIT 26

Report to the Mayor Regarding the Prioritized List of Lands
April 5, 2006

On behalf of the Hawai'i County Public Access, Open Space, and Natural Resources Preservation Commission, we are honored to present the Commission's first Prioritized List of Lands, which this Commission has prepared based on extensive public input and a fairly rigorous scoring process. We believe the attached lists accurately reflect the appropriate priority for the thirty-six (36) properties we have listed. We urge your administration and the County Council to respond quickly to those properties in most urgent need of protection, to keep the public informed, and most importantly, to follow through with the process started by our Commission by working proactively to acquire lands and property entitlements we have identified as worthy of preservation.

The Commission's Process

This Commission was created pursuant to Ordinance 05-166, confirmed by the County Council on October 5, 2005, and given six months to identify and prioritize properties and entitlements on an island-wide scale. Based on information provided to us by the Kaua'i County Public Access, Open Space and Natural Resources Preservation Commission, our Commission developed an intake form (see Attachment 1), and held public meetings all around the Island over a period of three weeks. At these public meetings, commissioners distributed these forms, explained our process, and notified the public of the role and responsibility of this Commission. We also made the intake form available on the Commission's website.

To allow our Commission sufficient time to evaluate intake forms, we set a deadline of February 10, 2006 to receive the forms. Completed intake forms were collected at public meetings held in North and South Hilo, Honoka'a, Waimea, North Kohala, North and South Kona, Ocean View, Nā'ālehu, Kea'au and Pāhoa. Additional completed intake forms were received from members of the public by mail. Through this process, we received over 200 forms.

In order to rank the properties submitted on the intake forms, our Commission developed a set of Categories (A-E) and six criteria (see Attachment 2), based on the work of the Kaua'i Commission. We devised a scoring sheet, in which the six criteria were further divided into twenty-seven (27) sub-criteria which were scored numerically, resulting in an overall percentage score (see Attachment 3).

All properly completed forms were evaluated. Due to the volume of intake forms we received, and the limited time we had to prioritize the properties, the Commission categorized only those properties which received a 55% or higher cumulative score.

The Prioritized List of Lands

The attached Properties and/or Entitlements for Purchase List (see Attachment 4) ranks properties or property entitlements (such as access easements or conservation easements) which we have identified as prime candidates for immediate acquisition by the County of Hawai'i. The attached Properties and/or Entitlements for Partnership List (see Attachment 5) ranks properties or property entitlements which we have identified as candidates for partnerships with the State or nonprofit organizations, who either already own and/or manage the properties, or are in the process of working to acquire them and could benefit from County support. The two lists are, in the eyes of the Commission, equally important.

For your reference, we have also attached a comprehensive list of properties submitted to this Commission before the February 10, 2006, deadline, which includes the percentage score they received (see Attachment 6). Submissions received after the February 10, 2006, deadline will be evaluated prior to December 31, 2006, when we revise the Prioritized List of Lands, pursuant to the terms of our enabling ordinance.

Next Steps

The Commission will be planning for the rest of 2006 by developing a timeline for the following remaining tasks:

- Research previously submitted properties with incomplete information
- Refine intake forms
- Discuss how to help the public complete intake forms
- Schedule next round of regional public meetings
- Consider site visits as a part of the Commission's process
- Prepare recommendations to expand funding for County land acquisitions from State, private, federal, and non-profit sources
- Submit updated prioritized list by December 31, 2006

Recommendations

Based on the input received from the public and the Commission's deliberations, we set forth the following three recommendations:

- Improve management and stewardship of public lands; e.g., implement and fund a County Ranger program;
- Create a long-term, stable funding source to keep the County competitive in the real estate market;
- Develop cooperative agreements and partnerships to leverage funding to manage and acquire properties.

Please feel free to ask us questions. We invite feedback from your administration and the County Council. Please also keep this process transparent. The public came before us with an honest plea to protect the character, spirit and culture of this Island. We urge your administration and the County Council to publish our Commission's work widely, and to report to the public and to this Commission on a regular basis regarding the County's progress. We look forward to working with you to make this Prioritized List of Lands a reality for the people who live on and visit Hawai'i Island.

COUNTY OF HAWAII
PUBLIC ACCESS, OPEN SPACE, AND NATURAL RESOURCES
PRESERVATION COMMISSION

2006 Assessment Criteria Form

Name of Site or Project:

Location or Address:

Ahupua'a:

☐ Puna ☐ S. Hilo ☐ N. Hilo ☐ Hamakua ☐ N. Kohala ☐ S. Kohala

☐ N. Kona ☐ S. Kona ☐ Ka'u

TMK:

Landowner(s):

Anticipated Use:

Purpose of suggested site (for public acquisition) or project:

- ☐ Public outdoor recreation and education, including access to beaches and mountains
 - ☐ Preservation of forests, beaches, coastal areas, natural beauty, and agricultural lands
 - ☐ Preservation of historic or culturally important land areas and sites
 - ☐ Protection of watershed lands to preserve water quality and water supply
 - ☐ Protection of natural resources, including buffer zones

County Zoning	
State Land Use	
SMA	
Flood Zone	
Hazards / Constraints	
Wetlands	
Archaeology / Historic Sites	
Listed in Hawai'i County Lands & Easements	
Listed in Inventory of Public Shoreline Access (1979)	
Listed in State Register of Historic Sites	
Existing Legal Public Access	

Special Funding Opportunity	
Possible Cost	
Identified in 2005 General Plan	
CATEGORY	
	SCORES
Criteria 1	
Criteria 2	
Criteria 3	
Criteria 4	
Criteria 5	
Criteria 6	
TOTAL	

Lands/Entitlements Category Descriptions

CATEGORY	DESCRIPTION
A	Lands or property entitlements with high public interest, imminent needs for acquisition, and largest benefit to the general public.
B	Lands or property entitlements that have limitations due to site constraints or physical hazards.
C	Lands or property entitlements that have operational or legal issues associated with them or have a narrower public benefit.
D	Lands or property entitlements that require County, State, and Federal collaboration to resolve issues relating to public use or maintenance.
E	Lands or property entitlements already being considered or dealt with by public agencies or charitable organizations.

Assessment Criteria Descriptions

CRITERIA	DESCRIPTION
1	Assesses whether the land or property entitlement meets the purposes of Hawaii County Ordinance [insert current, amended Ordinance #]
2	Assesses whether the land or property entitlement coheres to and furthers the vision and goals of Hawaii County's 2005 General Plan.
3	Assesses the level of community support, including reported urgency, based on the community input process.
4	Assesses whether the land or property entitlement could be acquired using the Hawaii County Public Access, Open Space, and Natural Resources Preservation Fund or other means.
5	Assesses whether boundaries, title, maintenance options, and steps toward acquisition are known.
6	Assesses conditions on the land relating to the dedication of an access, use conflicts, site maintenance, and the adequacy of amenities.

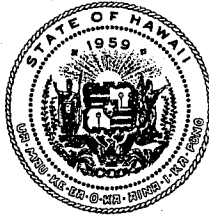
PUBLIC ACCESS, OPEN SPACE, & NATURAL RESOURCES PRESERVATION COMMISSION
PROPERTIES AND/OR ENTITLEMENTS FOR PARTNERSHIP LIST
(April 5, 2006)

TMK	Property	Entitlement	Anticipated Use	Significance	Priority Reason	Category / Purpose	Criteria Score
7-1-02	Kīholo Bay	Public Access	Recreation Preservation	Coastal natural and cultural resources	Preservation of coastal natural and cultural resources	D 1, 4, 5	66%
7-4-20	Kealahou Regional Park	Land title by County	Regional Park	Regional Park being planned by Kealahou 2020	Need park and recreation spaces	E-D 1, 5	65%
5-8-02-01	Kahena Ditch Road	State	Subsistence, cultural, educational			D	64%
3-6-6-005-027	Lalamilo Farm Lots Wainana	Buffer Zone	Buffer Zone	Urban encroachment	Maintain integrity of Lalamilo as premier vegetable growing region in State	D 3, 4	63%
3-8-3; 3-8-4	Forest Reserve Honaunau & S. Kona	Access to Mauka Trail	Access/Conservation			D	61%
9-1,2,3,4,5 (coastal)	Ka'u Coast	Conservation Preservation	Preservation, protection recreational use			D	61%
8-7-12-1; 8-7-12-3; 8-7-01-06	North American Properties; Ka'apana, Olelo Moana, Ka'ohe	Lease parcels, purchase conservation easement or purchase fee simple interest	Increase public access to State Forest Reserves	Protection of native forests, wildlife habitat and watershed lands. Consolidate forest reserve lands	Consolidation of State and Private parcels	D 1,2,3,4,5	60%

TMK	Property	Entitlement	Anticipated Use	Significance	Priority Reason	Category / Purpose	Criteria Score
4-1-06-7	Keanakolu Koa Forests	Koa restoration, native bird habitat restoration	Preserve area for habitat and watershed	Important lands for the preservation of native bird habitat	Leases may be available for purchase, other- wise land will continue to be used for grazing	D 1, 3, 4, 5	73%
9-3-01	Ka Lae / South Point	Public agency /	Public Access and protection of natural and cultural resources	Improved road to protect area from further erosion. Protection of historic sites, and National Historic Landmark properties	Area is being impacted by multiple roads and potential damage to cultural / historic sites and natural resources	D 1, 2, 3, 4	72%
3-5-7- 001-005	Cohen (Lapakahi State Historical Park Area)	Conservation / Access Easement	Preservation, access, protection, and recreational use	Cultural resources, beach access, and recreational use	Possible inclusion into the existing State Park parcel	D 1, 2, 3, 4	72%
2-6-18-1	Puu O'o Ranch Pi'ihonua	Protection of Native forest	Preserve land, remove from agricultural land use to preserve forest bird habitat	Adjacent parcels protect the endangered forest bird habitat; this parcel would help the preserve a larger section of land	Properties owned by the State and should be protected for the endangered birds, and to preserve the habitat of these birds	D 1,2,3,4,5	71%



LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:TM

CDUA: HA-3269

Roy A. Vitousek III
Cades Schutte
75-170 Hualalai Road, Suite 303
Kailua Kona, Hawaii 96740

APR 11 2006

Dear Mr. Vitousek,

SUBJECT: Conservation District Use Application HA-3269

The Office of Conservation and Coastal Lands (OCCL) is in receipt of your correspondence to the Department dated April 7, 2006. We have reviewed your letter and offer the following comments.

CDUP HA-1948

This permit was approved before 1984, which is more than 20 years ago. In April of 1995, a citizen's group claiming to represent the North Kohala coastline asked the Board of Land and Natural Resources (BLNR) to revoke the permit. The BLNR eventually "nullified" the permit, so this matter was closed. You state in your letter "...whatever issues there were must have been resolved before 1985 as the Board approved construction of a single family home in this location." Your statement is not necessarily true. Unlike today, applicants in 1985 were not required to complete cultural impact assessments. Thus as you can see, there is a possibility that new issues could potentially arise 20 years later in an social environment where cultural issues lie at the forefront of many land use issues.

APPLICATION PROCESS

You have stated that it does not appear to be *fair* that Staff had solicited for comments when it was known that the 30-day Environmental Assessment comment deadline had passed. *We did not solicit comments.* On March 10, 2006, Peter Young received an e-mail from Malama Kohala Kahakai regarding preserving the Kohala Coast in open space (Exhibit 1). This e-mail was forwarded to me. I then forwarded it to my Staff who responded to this public request. We felt obligated, as public servants, to respond to this request and sent information to this group regarding a pending action on the Kohala Coast.

EXHIBIT 28

Our staff has consistently informed applicants and the general public that comments are welcome on a CDUA up until BLNR decision-making. We obviously prefer receiving comments during the official environmental review period. However, late comments are routinely submitted and accepted by this office. The late comments that we received on your client's application were electronically sent to you or faxed to you the moment we received them and you have been given an opportunity to respond to them, either in writing or in person before the BLNR.

The employment of the Staff Planner requires specialized experience to collect and evaluate a variety of data for determination of public opinion. Thus, it is within the job capacity of the Staff Planner to consider all comments during the application process. Staff Planners must make every effort to collect relevant information from a variety of sources to formulate a recommendation to the BLNR. This cannot be effectively accomplished by ignoring community input because it was not timely. While we understand your concern about the timing of these comments, this office has consistently tried to accommodate such comments in light of the consequences of ignoring them. In this regard, Staff was just doing their job in furtherance on their constitutional mandate to preserve and protect the natural resources of the State for the benefit of present and future generations.

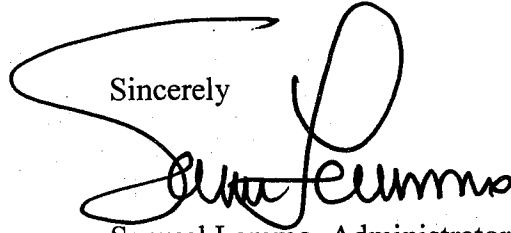
Regarding public access and State land, you had stated to Staff that you have camped and surfed there. You have prior knowledge that the community utilizes the area for camping, fishing, surfing and other recreational uses. In the former CDUP HA-1948, it was brought to the Department's attention that this area was utilized by a variety of users for generations. Inasmuch as people, have become accustomed to the site as a locus for surfing and camping, we are bound to hear complaints with development of the site for a private residence use. Furthermore, the road improvements will introduce and allow more individuals to access this area. This will create additional burdens on the State's already limited resources.

Regarding traditional and cultural properties, both Mr. Rechtman's and Dr. Abad's comments have been forwarded to the Historic Preservation Division for their comments. In addition, Staff has informed me that a map containing the unidentified burial of the former landowner, Kauwe, was given to you and your consultants on January 24, 2006 during a site inspection of the subject property. Cultural preservation has become a major issue in land use planning and decision-making during the past 20 years. OCCL staff wants to make sure that all relevant viewpoints on this matter are heard with respect to this highly sensitive and culturally important landscape.

I would also direct you to review the Acceptance letter for this CDUA addressed to your consultant at Mooers Enterprise and the Finding of No Significant Impact (FONSI) memorandum that was faxed to your consultant at Geometrician Associates. Both correspondences include the statement, **"this finding does not constitute approval of the proposal."** Conservation District Use Applications are at the discretion of the Board of Land and Natural Resources. Because of the controversial nature of some projects in the Conservation District, OCCL Staff takes great care to ensure that applicants are not led to believe that the BLNR's decision will be ministerial by virtue of the process going well in the eyes of the proponents.

Your response to comments shall be included with the Staff submittal for the Board's consideration. In addition, your comments have been forwarded to Malama Kohala Kahakai. Your client's CDUA will be heard at the April 28, 2006 Land Board meeting in Honolulu. You shall receive written notification and the Staff's submittal prior to the meeting date. Should you have any questions regarding this correspondence, please contact Tiger Mills at our Office of Conservation and Coastal Lands at (808) 587-0382.

Sincerely

A handwritten signature in black ink, appearing to read 'Samuel Lemmo', written over the word 'Sincerely'.

Samuel Lemmo, Administrator
Office of Conservation and Coastal Lands

c: Chairperson
Mooers Enterprises, LLC
Geometrician associates, LLC



Sam J
Lemmo/DLNR/StateHiUS
03/10/2006 01:56 PM

To Dawn T Hegger/DLNR/StateHiUS@StateHiUS, Kimberly
Mills/DLNR/StateHiUS@StateHiUS
cc
bcc

Subject Fw: Preserving North Kohala Coastal open space

History:

This message has been forwarded.

FYI

Samuel J. Lemmo, Administrator ><))))>
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
Phn (808) 587-0381
Fax (808) 587-0322
www.hawaii.gov/dlnr/occl

----- Forwarded by Sam J Lemmo/DLNR/StateHiUS on 03/10/2006 01:51 PM -----

Peter T
Young/DLNR/StateHiUS
03/10/2006 01:25 PM

To Sam J Lemmo/DLNR/StateHiUS@StateHiUS, Melanie A
Chinen/DLNR/StateHiUS@StateHiUS, Dan S
Quinn/DLNR/StateHiUS@StateHiUS
cc

Subject Fw: Preserving North Kohala Coastal open space

FYI

----- Forwarded by Peter T Young/DLNR/StateHiUS on 03/10/2006 01:24 PM -----



Gail Byrne
<gailbyrne@hawaii.rr.com>
03/10/2006 01:15 PM

To peteryoung@hawaii.gov, peteryoung@hawaii.rr.com
cc FredCachola@aol.com

Subject Preserving North Kohala Coastal open space

Aloha, Mr. Young,

The people of North Kohala feel very strongly about preserving the Kohala Coast in open space. In particular, the community would like to see the area makai of Akoni Pule Highway from Kohala Waterfront to Puakea permanently protected. Attached for your review is a letter from 30 businesses and organizations in North Kohala to Mayor Kim asking for this area to be protected.

Currently, TMK 3-5-7001001 (currently owned by the Reish Family Trust), which is an inholding in Lapakahi State Park, is for sale. This TMK is within the area the community would like to see preserved in open space.

Four years ago, North Kohala kupuna Fred Cachola drove the land with Mr. Reish and expressed the community's desire to see access to the

EXHIBIT |

area. In June 2005, Malama Kohala Kahakai and the Kohala Community Land Trust with support from the Hawaii Island Land Trust began working on putting together an offer and the financing to purchase this parcel to preserve it in open space. Most recently, the Trust for Public Land submitted an offer letter to the seller. We believe that no development, even a single family dwelling, is appropriate for this land.

Because this TMK is surrounded by state land, we wanted DNLR to be aware of the community's heart-felt desires to protect this area.

Thank you for your time.

Aloha,
Gail Byrne
Malama Kohala Kahakai



Ltr to Mayor from Kohala 1-31-06.pdf

Malama Kohala Kahakai **(Preserving the Kohala Coast)**

January 31, 2006

Aloha Mayor Kim,

Kohala Hawaiian Civic Club

Kohala Senior Citizens Club

North Kohala Merchants Assoc.
(representing 15 businesses in North Kohala)

North Kohala Community Resource Center

New Moon Foundation General Manager, Suzanna Gratz

Kohala Community Land Trust

Kohala Action E-News

Historic Hawaii Properties LLC

HokuWai Inc.

Hawaii Natural Resource Services LLC

Maika'i Ka Makani Inc

Kohala Natural Healing Arts

Malama Kai Foundation

Kohala Project Venture

Na Huapala 'O Hawaii and Malama Kukui Cultural Learning Center

Malama Kohala Kahakai

This letter is sent on behalf of the 30 organizations and businesses listed to the left and the individuals named on the next page. Over the last 30 years, the people of Kohala have continuously expressed the desire to see the Kohala Coast permanently protected. The reasons that the people of Kohala have wanted to save the coast in the past are still just as compelling and relevant today and include,

- areas of unquestionable archeological and cultural significance including the best pre-contact Hawaiian archaeological sites in the state, which have no protection, such as Holo Moana, the only navigational heiau on the island,
- one of the last most contiguous view planes from a highway in the state,
- protection of the foundation for a sustainable economy that respects the unique cultural and environmental landscape of Kohala,
- a relatively small number of large land owners, which makes acquisition and protecting this area easier and more efficient
- protection for pristine marine environments
- sustaining access to areas that have been used for generations for camping, hiking, swimming, fishing, etc.

For these reasons, we urge you and the Public Access, Open Space, and Natural Resources Preservation Commission to prioritize for protection the North Kohala coastal area makai of Akoni Pule Highway from Kohala Waterfront to Puakea and for select other coastal sites of significance such as Hale O Kaili Heiau, Kapanala, Mookini Heiau, the Kohala Lighthouse area, etc. A map delineating this area and listing the associated Tax Map Keys is enclosed.

For some of the individuals signing this letter, preserving the Kohala Coast is the work of their heart and soul and they are committed to spending the rest of their lives on this work.

Mahalo for your kokua in preserving these irreplaceable natural and cultural resources.

Cc: Hawaii County Council
Public Access, Open Space, and Natural Resources Preservation Commission
Representative Dwight Takamine
Senator Lorraine Inoyue
Rick Bennett, Ph.D., Hawaii Island Land Trust
Joshua Stanbro, Trust for Public Lands

Contact Information

Fred Cachola and Gail Byrne c/o North Kohala Community Resource Center P.O. Box 2, Hawi, Hawaii 96738
Fred: 808-685-4293 or Gail: 808-883-8268
FredCachola@aol.com gailbyrne@hawaii.rr.com

Individuals

Lani Bowman
Gail Byrne
Fred Cachola
Christine Calvo
Robert David
Jonathan Gaines
Suzanna Gratz
Sharon Hayden
Dennis and Lehua Matsuda
Stephanie Naihe
Tom Quinlan
Andrea Dean
Dee Chapone
Kaleopono
Ronna McEldowney
Christine Richardson
Carolyn Stewart
Terra Sutton
David Tarnas
Pua Weymouth
Desiree Yamamoto